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# The Evolution of Women's Rights in Inheritance

*Kristine S. Knaphlund\**

## I. INTRODUCTION

In the United States today, women execute wills at a rate comparable to men<sup>1</sup> or perhaps even greater,<sup>2</sup> but this development is relatively recent in our history. In the seventeenth and eighteenth centuries, very few women wrote wills. At that time, all of a woman's personal property became her husband's when they married, and the husband had management and control of her real property.<sup>3</sup> A married woman could execute a will conveying her personal property only with her husband's express consent.<sup>4</sup> In some states a married woman could bargain for additional property rights, including the right to execute a will, through a marriage settlement. Research on such settlements in South Carolina suggests that few married couples, perhaps 1 to 2%, actually executed such agreements.<sup>5</sup> Thus, several studies of wills probated before the late nineteenth century found that testators were overwhelmingly male.<sup>6</sup>

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1. CAROLE SHAMMAS, MARYLYNN SALMON & MICHEL DAHLIN, *INHERITANCE IN AMERICA FROM COLONIAL TIMES TO THE PRESENT*, 195-96 (Rutgers University Press 1987) (noting that women executed 50% of wills probated in Bucks County, Pennsylvania in 1979-80).

2. *Id.* (noting that women executed 58.8% of wills probated in Los Angeles County in 1979-80).

3. *Id.* at 36.

4. *Id.* See also Richard H. Chused, *Married Women's Property Law: 1800-1850*, 71 GEO. L.J. 1359, 1367 n.27 (1983) (noting that Massachusetts and Maryland enacted laws in 1842 and 1843 respectively, that required married women to obtain their husbands' consent to execute a will).

5. Marylynn Salmon, *Women and Property in South Carolina: The Evidence From Marriage Settlements, 1730 to 1830*, 39 WM. & MARY Q. 655, 663 (1982). Seventy-one percent of the 638 marriage settlements studied by Salmon gave the wife the power to write a will. *Id.* at 677.

6. SHAMMAS ET AL., *supra* note 1, at 42-43 (showing a study of wills in Bucks County, Pennsylvania from 1685 to 1756 found that 88% of the testators were male); James Deen, Jr., *Patterns of Testation: Four Tidewater Counties in Colonial Virginia*, 16 AM. J. LEGAL HIST. 154 (1972) (showing that wills in four counties filed from 1660 to 1719 all

The enactment of Married Women's Property Acts in the mid-nineteenth century changed women's will-making status in three important ways. First, in some states, statutes allowed married women to own property, typically that which they brought into the marriage or acquired by gift while married.<sup>7</sup> Second, some jurisdictions enacted legislation that allowed a married woman to write a will without her husband's consent.<sup>8</sup> Third, the old concepts of dower and courtesy, in which a widow or widower received a life estate in some or all of the decedent's property, were replaced in many states by an award in fee simple, thus giving many women who outlived their husbands more property to will away.<sup>9</sup>

When California entered the union in 1850, over ten years had passed since this movement began. Clauses protecting married women's property rights were included in the California state constitution, written in 1849.<sup>10</sup> Still, married women in the early years of statehood could in fact will away

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were executed by men); Lawrence Friedman, *Patterns of Testation in the Nineteenth Century: A Study of Essex County (New Jersey) Wills*, 8 AM. J. LEG. HIST. 34, 36 (1964) (showing that in 1850, of the thirty wills filed, only one was written by a woman). Two studies found somewhat higher numbers of women writing wills: T. P. Schwartz, *Durkheim's Prediction About the Declining Importance of the Family and Inheritance: Evidence From the Wills of Providence, 1775-1985*, 36 SOC. Q. 503, 510 (1996) (finding in study of Providence, Rhode Island wills filed from 1775 to 1790 that 19% were executed by women), and Norma Basch's study of wills probated in Westchester County, New York. NORMA BASCH, IN THE EYES OF THE LAW: WOMEN, MARRIAGE AND PROPERTY IN NINETEENTH CENTURY NEW YORK 101 (Cornell University Press 1982) (showing that in 1825, twelve of the forty-three wills (27%) were executed by women (all widowed or single), while in 1850, thirteen of the sixty-two wills (21%) were executed by women, including one married woman). *Id.* at 105.

7. BASCH, *supra* note 6, at 27. The first state to pass such a statute was Mississippi in 1839. *Id.*

8. The 1848 New York statute known as the Married Women's Property Act provided in Section 3:

It shall be lawful for any married female to receive by gift, grant, devise or bequest, from any person other than her husband and hold to her sole and separate use, as if she were a single female, real and personal property, and the rents, issues and profits thereof, and the same shall not be subject to the disposal of her husband, nor be liable for his debts.

Act of Apr. 7, 1848, ch. 200, 1848 N.Y. Laws 667-68, § 3. A similar statute was enacted in New Jersey in 1852. Act of Mar. 25, 1852, ch. 171, 1852 N. J. Laws 407, § 3.

9. SHAMMAS ET AL., *supra* note 1, at 85. Shammas notes that, by the 1890s, "over 80 percent of the post-1850 jurisdictions had abolished curtesy, and over two-thirds had abolished dower." *Id.* at 86. In contrast, Shammas' study of wills from the 1790s in Pennsylvania noted that 63% gave the widow "roomspace and provisions" for her life or for her widowhood (terminating on her remarriage) as all or the major part of her inheritance, thus leaving her with nothing to will away at death. *Id.* at 112.

10. CAL. CONST. art. XI § 14 (1849) stating:

All property, both real and personal, of the wife, owned or claimed by marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property, as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

very little property. The husband had sole management and control of all the property including the wife's separate property.<sup>11</sup> A married woman could not write a will without her husband's written consent.<sup>12</sup> Even with his consent, she could only will away her separate property; "her" community property went to her surviving husband without administration.<sup>13</sup> The 1861 California Married Women's Property Act gave women more control over their property. A married woman in California had management and control of her separate property, which was no longer accessible to her husband's creditors.<sup>14</sup> After 1864, she no longer needed her husband's consent to execute a will, although she could still only will away her separate property.<sup>15</sup> In 1872, married women finally gained full managerial power over all of their separate property.<sup>16</sup>

With these changes, by 1893, Los Angeles had become home to many women with considerable property. Did these women execute valid wills? If so, to whom did they leave their property: to their surviving husbands (who already owned all the community property) or to friends, family, or charity? If women omitted a spouse or child, was a will contest likely? Did female testators behave just like male testators?

To answer these questions and many more, in the summer of 2005 a team of five researchers<sup>17</sup> analyzed all the decedent files available in the Los Angeles County probate archives for 1893,<sup>18</sup> the oldest files still stored

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11. Act of Apr. 17, 1850, ch. 103, 1850 Cal. Stat. 254, § 6.

12. Act of Apr. 10, 1850, ch. 72, 1850 Cal. Stat. 177, § 2.

13. Act of May 8, 1861, ch. 323, 1861 Cal. Stat. 310-11, § 1.

14. Susan Westerberg Prager, *The Persistence of Separate Property Concepts in California's Community Property System, 1849-1975*, 24 UCLA L. REV. 40 (1976).

15. In 1874, Civil Code section 1401 stated, "[u]pon the death of the wife, the entire community property, without administration, belongs to the surviving husband, if he shall not have abandoned and lived separate and apart from her . . ." CAL. CIV. CODE § 1401 (1874). In her book, *PROBATE CONFISCATION AND THE UNJUST LAWS WHICH GOVERN WOMEN*, Mrs. J. W. STOW pleaded for the enactment of an 1876 bill that would extend this same protection to wives on the death of the husband. J. W. STOW, *PROBATE CONFISCATION AND THE UNJUST LAWS WHICH GOVERN WOMEN* 5-6 (Bacon and Company 1878). However, such a statute, after being rejected as a California ballot proposition in November 1920, was not enacted by the legislature until 1923. In 1919, the legislature passed an amendment to section 1401 to extend this protection to wives. Act of May 27, 1919, ch. 611, 1919 Cal. Stat. 1274, § 1. However, the enactment of the amended statute was delayed, and the proposed amendment was put to a statewide referendum in 1920. See Act of May 27, 1919, ch. 611, 1919 Cal. Stat. 1274, § 1 (Supp. 1920). The referendum failed, and the legislature enacted the amended statute in 1923. Act of Apr. 16, 1923, ch. 18, 1923 Cal. Stat. 29, 30 § 1 (codified as CAL. CIV. CODE § 1401 (1923)).

16. Prager, *supra* note 14, at 41.

17. The author, plus four research assistants who had just completed their first year of law school at Pepperdine School of Law: Jennifer Allison, Jeralin Cardoso, Kate London, and Timothy McDermott.

18. Our research began with Case 1 (the case numbers were assigned by the Los Angeles County Probate Archives) in Location (box) No. 102119 and continued through Case 433 in Location No. 102130. Two boxes could not be located in the archives: Nos. 102124 and 102126.

there. Our study<sup>19</sup> was composed of 246 probate files: 138 intestate decedents and 108 testate decedents.

Major conclusions of our study:

1. Some women in 1893 Los Angeles had considerable separate property assets, especially married women. Ten women left estates with over \$10,000 in assets; the largest of these, amassed by an immigrant from Ireland who worked as a maid, was over \$285,000 in 1893 dollars, about \$6.5 million today.<sup>20</sup> Testacy for both men and women was more likely if one had a large estate.

2. Not surprisingly given California law at the time, married men were more likely than married women to will their entire estates to their surviving spouses. About half of the married men with issue (twenty out of forty-one) left everything to their wives, while only one out of ten married women with issue left all to her husband. Three married women willed nothing at all to their surviving spouses.

3. In cases in which a testator was survived by issue but no spouse, many men favored a child or grandchild over other issue; no woman treated her descendants unequally.

4. Two dozen testators left no surviving spouse or issue. Only one woman left all of her property to other family members, while half of the

19. Seven published empirical studies of wills are comparable in methodology to this study. Three of the seven were smaller in size than ours:

(1) Britt's study of forty-nine wills filed in New York between 1880 and 1885. Steuart Henderson Britt, *The Significance of the Last Will and Testament*, 8 J. OF SOC. PSYCHOL. 347 (1937) [hereinafter Britt].

(2) Dunham's study of 170 probate proceedings initiated in Illinois in 1953 and 1957. Allison Dunham, *The Method, Process and Frequency of Wealth Transmission at Death*, 30 U. CHI. L. REV. 241 (1962-63) [hereinafter Dunham].

(3) A study of 150 New Jersey wills from 1850, 1875, and 1900. Lawrence M. Friedman, *Patterns of Testation in the 19th Century: A Study of Essex County (New Jersey) Wills*, 8 AM. J. OF LEGAL HIST. 34 (1964) [hereinafter Friedman].

The other four studies were larger than this one:

(4) A study of 300 estates from six Iowa counties in 1973 and 1974. Contemporary Studies Project, *A Comparison of Iowans' Dispositive Preferences with Selected Provisions Of the Iowa and Uniform Probate Codes*, 63 IOWA L. REV. 1041, 1052 (1977-78) [hereinafter Iowa Study].

(5) Browder's examination of 223 testate estates in Michigan for 1963 plus 100 English wills selected at random from 1963. Olin L. Browder, Jr., *Recent Patterns of Testate Succession in the United States and England*, 67 MICH. L. REV. 1303, 1304 (1968-69) [hereinafter Browder].

(6) A study of 367 testate and intestate estates in Wisconsin from 1929 to 1944. Edward H. Ward and J. H. Beuscher, *The Inheritance Process in Wisconsin*, 1950 WIS. L. REV. 393, 393 (1950) [hereinafter Ward/Beuscher].

(7) The largest published study of wills involved 659 decedents' estates in Ohio in 1964 and 1965. MARVIN B. SUSSMAN, *THE FAMILY AND INHERITANCE* 44-45 (1970) [hereinafter SUSSMAN].

20. Using the formula posted by the Minneapolis Federal Reserve, \$1 in 1893 would be worth \$22.52 in 2006. Consumer Price Index (Estimate) 1800-2007, <http://minneapolisfed.org/Research/data/us/calc/hist1800.cfm> (last visited Sept. 5, 2007).

men did so. Conversely, four men left nothing to their family members, while no woman excluded all family entirely from her will.

5. While contemporary Pennsylvanians established trusts with some frequency at this time,<sup>21</sup> in Los Angeles only 10% of the testators created trusts in their wills for the benefit of minor children, nieces and nephews, grandchildren, or even a spouse or parent.<sup>22</sup>

6. As is true today, wills that excluded a spouse or a child were more likely to be contested. What is remarkable, considering the small sample size, is the sheer number of contests, with 10% of the probated wills subject to a formal contest and another 10% subject to other kinds of litigation.

These major conclusions, and a host of minor ones, are discussed in the rest of this Article. Part II gives the historical background in Los Angeles in 1893 including the population of the city and county, the racial and gender composition, the difficulties in communication, and the statutes governing the execution of wills in California in the late nineteenth century. Part III gives an overview of the 246 decedents included in the study, looking at the size of the estates, the types of wills, how long wills were executed before death, the use of trusts, and unusual features of the wills. Part IV analyzes the patterns of distribution in the wills, with particular attention given to differences between male and female testators; this section also analyzes the types of wills that gave rise to will contests and other litigation. Part V concludes the Article.

## II. HISTORICAL BACKGROUND

### A. RAILROADS, LAND BOOMS, AND POPULATION GROWTH IN LOS ANGELES

Los Angeles in 1893 was radically different from the preceding decade. In 1880, the census recorded a population of 33,381 in Los Angeles County.<sup>23</sup> By 1890, Orange County had split off from Los Angeles County and had a population of 13,589, with 101,454 reported in the new, smaller Los Angeles County.<sup>24</sup> The city of Los Angeles had a population of 11,000 in 1880 and over 50,000 in 1890. "Of this latter number, it may safely be estimated that more than three-fourths had not been living in the city more

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21. SHAMMAS ET. AL., *supra* note 1, at 186 tbl.9.4 (finding that 29.3% of all wills in Bucks County, Pennsylvania in the 1890s used trusts, including 45.3% of affluent testators and 58.8% of affluent married testators). Their study of Los Angeles wills in the 1890s found that just 12.5% of wills included trusts; 20% of affluent testators and 20.9% of affluent married testators used trusts. *Id.*

22. A study of wills in early Virginia found that, as early as 1660, about 10% of wills included a trust. Deen, *supra* note 6, at 172.

23. DEP'T OF THE INTERIOR, CENSUS OFF., REPORT ON THE POPULATION OF THE UNITED STATES AT THE ELEVENTH CENSUS: 1890 11 (1895) tbl.4 "Population of States and Territories by Counties, at each Census: 1790-1890."

24. *Id.*

than four years.”<sup>25</sup> Part of the reason for this astonishing growth was due to the railroads.<sup>26</sup> The Southern Pacific completed its transcontinental line to Los Angeles in 1876.<sup>27</sup> When the Atchison, Topeka, and Santa Fe Railroad opened its competing line in 1885, the price of a ticket from Chicago to Los Angeles fell from \$85 to \$15, then to \$10 and for a few hours, to \$1 per passenger one way.<sup>28</sup> Thanks to the lower prices, within one year the Southern Pacific brought in 120,000 passengers to Los Angeles, and “the Santa Fe had three or four trains a day arriving” there.<sup>29</sup>

Many of those making the trip were attracted by the prospect of investing in land in California. At the station, real estate salesmen greeted the disembarking passengers and took them by buggy or flatcar to new property developments. “While they gulped free lunches, brass bands blared and daredevils risked the balmy skies with balloon ascensions. A mania seized them. Why not buy building lots on credit, and then resell a few days later at a profit?”<sup>30</sup> Real estate in Los Angeles became even more attractive when, in 1892, Edward Doheny reported oil within the city.<sup>31</sup> “In a few months an ‘oil craze’ was in full bloom . . . . In some blocks there was a well for almost every lot.”<sup>32</sup> Shortly thereafter, real estate speculation slowed considerably as banks tightened their lending policies.<sup>33</sup> In 1893, a financial panic caused four banks in Los Angeles to close their doors, with one bank failing and another liquidated.<sup>34</sup> These events help explain the high number of probate files where the decedents owned many lots of real estate, and also those estates with a large number of promissory notes rather than money deposited in banks.<sup>35</sup>

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25. WILLIAM A. SPALDING, 1 HISTORY AND REMINISCENCES OF LOS ANGELES CITY AND COUNTY, CALIFORNIA 298 (William A. Spalding ed., J.R. Finnell & Sons Pub. Co. 1931) (1931) [hereinafter SPALDING VOL. 1].

26. In addition to the railroads’ impact on growth, there were allegations that the railroads were responsible for two decedents’ deaths. In Case 295, Mariana Grifalva de Lamarca died intestate in 1893 leaving no property except a claim against the Southern California Railroad Company for personal injuries that resulted in her death. There is no record of a judgment. Case 299’s Mary Scofield died on August 5, 1893; her estate sued the railroad for \$20,000 for negligence in not blowing the train’s whistle. The verdict was for the defendant with costs of \$291.

27. JOSEPH S. O’FLAHERTY, THOSE POWERFUL YEARS: THE SOUTH COAST AND LOS ANGELES 1887-1917 16 (Exposition Press 1978).

28. *Id.* Using the formula posted by the Minneapolis Federal Reserve, \$1 in 1893 would be worth \$22.52 in 2006. Consumer Price Index (Estimate) 1800-2007, *supra* note 20. Thus, in 2006 dollars, the fare fell from \$1914 to \$338 to \$225 and finally to \$22.52.

29. O’FLAHERTY, *supra* note 27, at 17.

30. DAVID LAVENDER, LOS ANGELES TWO HUNDRED 49-50 (Continental Heritage Press 1980).

31. SPALDING VOL. 1, *supra* note 25, at 306.

32. *Id.*

33. LAVENDER, *supra* note 30, at 50.

34. SPALDING VOL. 1, *supra* note 25, at 308.

35. For examples of probate files in which decedents owned many lots of real estate see: Case 4 Patrick Conroy (listed ninety-five parcels in the inventory), Case 56 Thomas Brown (had over one hundred parcels), and Case 216 Charles Langford (had fifty parcels of

Many of the residents of Los Angeles were from foreign countries: The Census of 1890 reported that 25% of the city's inhabitants were foreign born<sup>36</sup> and many left close family members such as parents and siblings in other countries. Nine testators, all single men, left family in Scotland, England, France, Ireland, Germany, and Switzerland.<sup>37</sup> Similarly, those dying intestate left surviving family members in Sweden, Mexico, Spain, Germany, and Italy,<sup>38</sup> and four decedents were from Ireland.<sup>39</sup>

The difficulty of staying in touch with far-flung relatives is also evident in the probate files. Two testators had lost track of family members: Case 223's Wells Gerry declared in his will that he had two brothers and one sister but didn't know "if they are still alive."<sup>40</sup> Case 10's Charlotte Maxwell, in a will executed twelve days before her death, gave bequests to her two grandchildren and all the rest of her property to her four children. Her daughter Maria, named in the will, died almost two years before the will was executed, a fact apparently not known to the testator.<sup>41</sup> Those dying intestate were even more likely to have lost track of family members. Nine of those dying intestate (6%) had no known heirs, although only one of the nine had significant assets.<sup>42</sup> The other eight, six men and two women, had few assets and many debts, so family members may have preferred to remain unknown.<sup>43</sup> In contrast, the Ohio study of probate

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real property). For examples of estates with a large number of promissory notes see: Case 230 Mary Perham (left an estate appraised at \$13,760, including over \$11,000 in promissory notes secured by mortgages) and Case 364 William Penn Evans (estate of over \$22,000 was mostly promissory notes, with real property valued at only \$3300).

36. DEP'T OF THE INTERIOR, CENSUS OFF., REPORT ON THE POPULATION OF THE UNITED STATES AT THE ELEVENTH CENSUS: 1890 451 (1895) tbl.19 "Population by sex, general nativity, and color, of places having 2500 inhabitants or more: 1890," (showing 12,752 were foreign born (25%), and 37,643 were native born).

37. Case 212 James William Earle Stewart (Scotland); Case 206 George William Spawforth (England); Case 143 Joseph Naud (France); Case 342 Antoine Charvoz (France); Case 321 Terrence Kenney (Ireland); Case 343 Jacob Stengel (Germany); Case 361 Charles Wagner (Germany); Case 401 Albert Herminghaus (Germany); Case 366 C.U. Mueller (Switzerland).

38. Case 120 Andrew Danielson (Sweden); Case 157 Josefa de Celis (Mexico and Spain); Case 320 Andrew Rein (Germany); Case 351 Pietro Luciardi (Italy).

39. Case 95 Bridget Wilson; Case 306 Alicia Walsh; Case 307 Olivia Bovaird; Case 404 Edward Herne.

40. Case 223 Wells Gerry.

41. Case 10 Charlotte Maxwell.

42. Case 434 J.D. Sentt. No known heirs. His estate consisted of real property worth \$450 and personal property worth \$160.

43. Case 36 Gus Kurz (\$227); Case 91 Pasquale Montagono (\$26); Case 107 Peter Agnew (\$58 paid to a creditor); Case 160 Thomas J. Sheehan (\$108 paid to a creditor with a claim for \$570); Case 235 Hugh McMahon (\$82 with debts of \$92); Case 330 C.E. Green (one lot alleged to be worth \$250; no administrator or appraiser was appointed, and no decree of distribution was in the file); Case 337 Priscilla Price (\$28.56 after expenses); Case 354 Peter Minnick (one lot estimated at \$200. As in Green's case, *supra*, no other documents are in the file so perhaps the court decided that Minnick did not own the land); Case 421 David Munro (insolvent).



between 1964 and 1965 found only twelve decedents out of 659 (2%) had no known heirs.<sup>44</sup> Other problems associated with the difficulties of communication at that time are also apparent in the files. In one case, the coroner wrote to the decedent's family members asking for a photograph in order to identify the body. The file contains two heavy photographs on glass plates.<sup>45</sup> In other cases the proceedings were closed and then re-opened years later as survivors searched for the decedents' assets.<sup>46</sup> In addition to delays caused by lack of information, mortality rates may have played a part in at least four cases when the person appointed to administer the estate, or her attorney, died.<sup>47</sup> In other cases long delays may have been due to the administrator/spouse trying to raise young children while probating the estate,<sup>48</sup> or coping with large numbers of parcels of real property.<sup>49</sup> Decedents who were residents of another state<sup>50</sup> or a foreign country<sup>51</sup> might also have long periods of probate administration. A few cases offer no explanation on why probate took so long;<sup>52</sup> in other cases, all involving intestate decedents, probate was unexpectedly quick.<sup>53</sup> While the 1893 records were not complete enough to determine an average time to

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44. SUSSMAN, *supra* note 19, at 72.

45. Case 120 Andrew Danielson.

46. Case 80 N.E. Swartwout (re-opened in 1926); Case 81 Benjamin Morgan (re-opened in 1944); Case 295 Mariana Grifalva de Lamarca (re-opened in 1907).

47. Case 108 William Cochran. Died in 1877; a decree of distribution was made Sept. 12, 1893 but through inadvertence not entered until Oct. 10, 1921. The wife's lawyer was H.K.S. O'Melveny who died Nov. 18, 1893 (Case 390). Case 130 William Steele. Survived by his 72-year-old wife, who was appointed administratrix; his wife did not close the estate before her death in 1899. A new administrator was appointed in 1911, and the estate was closed in 1912. Case 310 Adelaide Gifford. Survived by her husband, who was named executor; he died in 1903 and the estate was finally closed in 1906. Case 333 William Penfield. Survived by his wife, who was appointed administratrix, and three adult children; his wife died in 1894 and his daughter was appointed to administer the estate.

48. *See, e.g.*, Case 111 Peter Richards. Survived by his wife and four minor children ages thirteen months to thirteen years. His wife, appointed administratrix, died in Nov. 1914 without closing the estate. A petition for amended letters of administration to complete administration was filed in 1917. *See also* Case 355 John Kennedy. Survived by his wife (who was appointed administratrix) and two minor daughters. A petition to set aside the estate for his wife and children was approved in 1894 but not filed until 1897.

49. *See, e.g.*, Case 56 Thomas B. Brown. Brown, a lawyer, died intestate survived by his wife (age thirty-five) and six children ages two to thirteen. His wife was named administratrix. His estate included a law library and over 100 parcels of real property, with a total appraised value of \$104,980, all separate property. By the time probate closed twelve years later in 1905, the estate had almost tripled in value to \$298,659.

50. *See, e.g.*, Case 339 Mary Aplin. Ms. Aplin was a resident of Wisconsin. Her estate in California was distributed in Mar. 1902.

51. Case 306 Alicia Walsh and Case 307 Olivia Bovaird both died intestate in Ireland owning real property in California. Their estates took over ten years to close.

52. Case 10 Charlotte Maxwell (decree of distribution was filed in 1913); Case 45 Matilda Hawes (1904).

53. Case 140 Antonio Sandobal (five months); Case 152 P.F. Lothrop (six months); Case 158 Joseph Tomlinson (three months); Case 327 Fred Constantine (six weeks); Case 352 John Sherman (seven weeks).

close probate, it is likely that administration in 1893 took far longer than the time found in other probate studies due to the difficulties in communication.<sup>54</sup>

## B. RACIAL COMPOSITION OF LOS ANGELES

The overwhelming majority of inhabitants of the city, 47,205 or 94%, were reported as white, with 1258 classified as "Negro," 1871 Chinese, twenty-six Japanese, and thirty-five "Civilized Indians."<sup>55</sup> It was not possible to determine the race of a decedent since no racial identifiers were included in the probate files, and only one file contained a photograph of the decedent.<sup>56</sup> Ethnicity or national origin could in some cases be surmised by the decedent's country of origin, but it was striking that there were no Chinese surnames or documents in the files despite the fact that Chinese were 4% of the population of the city, and as many as 10,000 in the county.<sup>57</sup>

Although California relied on Chinese immigrants for their labor, especially in building the railroads, those who came to the United States, almost entirely young men, did not expect to stay here and were strongly discouraged from doing so.<sup>58</sup> The Chinese Exclusion Act, initially passed by Congress in 1882 to restrict immigration from China for ten years, was renewed in 1892, 1902, and 1904.<sup>59</sup> The 1892 Act required Chinese immigrants to obtain a residence certificate; the first person to be deported under the law, in 1893, was a Los Angeles resident.<sup>60</sup> The Scott Act of 1888 prohibited Chinese workers who temporarily left the country from returning.<sup>61</sup>

The State of California and local governments also discriminated against the Chinese. The California Constitution of 1879 prohibited

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54. The Ward/Beuscher study concluded that the average time to close estates in their Wisconsin county from 1929-44 was 12.7 months for estates with real property, and 9.9 months for those without. Ward/Beuscher, *supra* note 19 at 403. Dunham found that the average time to close an estate was 18 months in 1953 and 13 months in 1957. Dunham, *supra* note 19, at 269. The Iowa study found that over half the estates had approval of the final report within a year of the decedent's death. Iowa Study, *supra* note 19, at 1057 tbl.1.

55. DEP'T OF THE INTERIOR, CENSUS OFF., *supra* note 36 (listing Los Angeles County as having 26,224 male inhabitants (52%) and 24,171 female inhabitants (48%)).

56. Case 120 Andrew Danielson.

57. David Pierson, *Reminders of Bigotry Unearthed*, L.A. TIMES, Mar. 15, 2006, at A1.

58. Shih-Shan Henry Tsai, *The Chinese Experience in Nineteenth-Century America*, in *COMING TO AMERICA: THE CHINESE* 44-46 (C.J. Shane ed., Greenhaven Press 2005); Stanford M. Lyman, *Racism and Anti-Chinese Legislation*, in *COMING TO AMERICA: THE CHINESE* 70-76 (C.J. Shane ed., Greenhaven Press 2005).

59. Chinese Exclusion Act, ch. 126, 22 Stat. 58, 58-61 (1882) (repealed 1943). The United States Supreme Court upheld the 1892 Geary Act as constitutional in *Fong Yue Ting v. United States*, 149 U.S. 698, 713 (1893).

60. Chinese American Museum, *Chinese Americans in Los Angeles: A Timeline*, <http://www.camla.org/history/timeline.htm> (last visited Sept. 8, 2007).

61. The 1888 statute, Act. of Oct. 1, 1895, ch. 1064, 25 Stat. 504, 504 (repealed), was upheld in *Chae Chan Ping v. United States*, 130 U.S. 581, 609 (1889).

"idiots, insane persons, and all natives of China" from voting,<sup>62</sup> while another provision banned Chinese from public work.<sup>63</sup> In addition, Los Angeles passed an ordinance in 1880 excluding all Chinese workers from city contracts<sup>64</sup> and California prohibited Chinese who were not citizens from entering certain professions.<sup>65</sup> Furthermore, in order to be buried in Los Angeles' cemetery for paupers, Chinese were required to pay \$10, while others were buried at no charge.<sup>66</sup> Given the pervasive discrimination against those from China, perhaps these workers did not accumulate enough property to require probate administration of their estates; in any event, no probate files with Chinese names were found.

### C. PROBATE STATUTES IN CALIFORNIA

In 1893, a married woman in California could execute a will conveying all of her separate property, without her husband's consent.<sup>67</sup> However, she could only will away her half of the community property in cases where her husband had abandoned her and lived separate and apart from her. Otherwise, upon the wife's death, all of the community property belonged to the husband without administration.<sup>68</sup> In contrast, the husband could will away his half of the community property and all of his separate property unconditionally.<sup>69</sup> If the husband failed to will away his half of the community property, it was distributed to his descendants; if he had no descendants, it was distributed the same way as separate property.<sup>70</sup>

In contrast to the statutes covering the disposition of community property, California Civil Code section 1386, which codified the rules for the inheritance of separate property, provided the same distribution for men

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62. Elizabeth Hull, *Naturalization and Denaturalization: A Documentary History, in ASIAN AMERICANS AND THE SUPREME COURT* 403, 404 (Hyung-Chan Kim ed., 1992), cited with approval in Joyce Kou, Comment, *Excluded, Segregated and Forgotten: A Historical View of the Discrimination of Chinese Americans in Public Schools*, 5 ASIAN L.J. 188, n.41 (1998).

63. Chinese Americans in Los Angeles, *supra* note 60.

64. *Id.*

65. Kou, *supra* note 62, at 188.

66. Pierson, *supra* note 57, at A19.

67. In 1866, California Civil Code section 1273 repealed an 1850 law requiring a married woman to obtain her husband's consent to write a will. Prager, *supra* note 14, at 41.

68. CAL. CIV. CODE § 1401 (1874) (stating "[u]pon the death of the wife, the entire community property, without administration, belongs to the surviving husband, if he shall not have abandoned and lived separate and apart from her . . .").

69. CAL. CIV. CODE § 1402 (1874), stating:

Upon the death of the husband, one half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition, goes to his descendants . . . and in the absence of both such disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband."

70. *Id.*

and women. It stated that where the decedent was survived by a spouse and one child (or the lawful issue of one predeceased child), the surviving spouse took half, and the child (or issue of the predeceased child) took the other half. The surviving spouse's share was reduced to one-third when the decedent left more than one living child, or one child and the issue of one or more predeceased children.<sup>71</sup> If the decedent left no issue, then the surviving spouse received half the separate property, and the decedent's father and mother took the other half.<sup>72</sup> The surviving spouse took all the separate property only if the decedent left no issue, parents or siblings.<sup>73</sup>

### III. OVERVIEW OF THE PROBATE FILES

Los Angeles' population was roughly equally divided between men and women in 1893,<sup>74</sup> but as in other studies, men predominated in both the percentage of testators and the percentage of overall probate files. There are at least three ways to count the files.

First, for how many decedents was probate opened at all, whether testate or intestate? Because probate was necessary only if the decedent had assets to be transferred to others, many people had no probate administration because they were simply too poor. For a married woman, administration was necessary only if she owned separate property since her husband owned all the community property by operation of law. Thus we would expect the proportion of probate files for female decedents to be substantially less than 50%. Our study found that 28% of all decedents testate and intestate (68 of 246) were female, a smaller percentage than in studies of later time periods. Sussman's study of Ohio probate files in 1964-65 noted that 39% of the decedents were female.<sup>75</sup> In 1953 and 1957 in Cook County, Dunham found that 38% of the probate estates involved female decedents.<sup>76</sup> The Iowa Study found a larger percentage of women,

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71. CAL. CIV. CODE § 1386(1) (1874), stating:

If the decedent leaves a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one third to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation.

72. CAL. CIV. CODE § 1386(2)-(3) (1880). Originally the 1850 California law gave half to the spouse and half to the decedent's father. The decedent's mother received a share only if the father did not survive, in which case her share was equal to that of the decedent's brothers and sisters if any. The statute was amended in 1880 to provide the father and the mother with the same right of inheritance. *Id.*

73. CAL. CIV. CODE § 1386(5) (1874).

74. DEP'T OF THE INTERIOR, CENSUS OFF., *supra* note 36 (listing Los Angeles County as having 26,224 male inhabitants (52%) and 24,171 female inhabitants (48%)).

75. SUSSMAN, *supra* note 19, at 71.

76. Dunham, *supra* note 19, at 249 n.17.

with 44% of the 295 estates having belonged to female decedents.<sup>77</sup>

Second, of those who executed a will, how many were women? Again, because married women could not will away community property (including their own wages accumulated during the marriage) we would expect that less than 50% of the wills would be executed by women. Twenty-eight percent of the testators in 1893 (30 of 108) were female, about the same percentage as the wills in 1890 Sacramento, California,<sup>78</sup> and in the range of the results found in Friedman's nineteenth century study. Friedman found an increase of women testators during the time period of his New Jersey study, with women as 22% of testators in 1875 and 40% in 1900.<sup>79</sup> Our percentage is much lower than that found by Schwartz in his Rhode Island study: 53% of the wills probated in 1885 Providence were written by women.<sup>80</sup>

Third, of those with enough assets to warrant probate of the estate, what percentage executed a will? Surprisingly, the testacy rate in 1893 was exactly the same for men and women: 44% of the male decedents in our study executed a will (78 of 178), as did 44% of the women (30 of 68).<sup>81</sup> Being married at death did not increase one's chances of dying testate: Only 45% of those married at death executed a will. Married women were slightly more likely to execute a will than married men.<sup>82</sup>

Thus, overall the testators were 72% male and 28% female. Seventy-eight of the 108 testators were male, with fifty-two married and twenty-six single. Among the thirty female testators, eighteen were married and twelve were single or widows. The composition of those dying intestate

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77. Iowa Study, *supra* note 19, at 1062 n.108.

78. Debra S. Judge & Sarah Blaffer Hrdy, *Allocation of Accumulated Resources Among Close Kin: Inheritance in Sacramento, California, 1890-1984*, in 13 *ETHOLOGY & SOCIOBIOLOGY* 501 (1992) (stating that 30% of wills probated in 1890 were executed by women).

79. Friedman, *supra* note 6, at 36. Only one testator (3%) in 1850 was female; at that time married women in New Jersey could not execute wills. Married women gained the right to execute wills in New Jersey in 1864. *Id.*

80. Schwartz, *supra* note 6, at 510.

81. See app. A figs. 1-3. These percentages are comparable to the Ward/Beuscher summary findings from 1929-44 in which 47% were testate, although Ward/Beuscher noted a marked decline in the percentage of testate estates during the years of their study in Wisconsin, with 62% testate in 1929 but only 39% testate in 1944. Ward/Beuscher *supra* note 19, at 411-12. Dunham found that men were 53% testate and women were 57% testate. Dunham, *supra* note 19, at 248. Sussman found a much larger percentage of wills with 69% testate (453 of 659) and 31% intestate (206 of 659). SUSSMAN, *supra* note 19, at 63. Friedman also found a higher testacy rate with 245 probated wills and 145 intestacies in 1875 (63% testate) and 500 probated wills versus 423 intestacies in 1900 (54% testate). Friedman, *supra* note 6, at 35 n.6.

82. Our study found thirty-six married women for whom probate proceedings were filed; eighteen (50%) died testate. One hundred and eighteen married men had probate proceedings; fifty-two of the 118 (44%) died testate. These numbers are comparable to the Iowa Study, which found that 49% of married decedents died testate. Iowa Study, *supra* note 19, at 1075 tbl.9.

was the same as for the testate: One hundred of the 138 intestates (72%) were male, with sixty-six married men and thirty-four men who were unmarried or widowers. Of the thirty-eight women who died intestate, eighteen were married and twenty were single or widows.

As one would anticipate, most of those with substantial assets in 1893 executed a will.<sup>83</sup> Thus, while five decedents, including one woman, left estates over \$100,000 in 1893 dollars,<sup>84</sup> only one of the five was intestate, and that estate was the smallest of the group.<sup>85</sup> Another four decedents had estates between \$50,000 and \$100,000;<sup>86</sup> of these, two were intestate (one male, one female)<sup>87</sup> and two were testate (one male, one female).<sup>88</sup>

The twenty smallest intestate estates, based on the total property reported in the inventories, ranged from \$25 to \$255, with an average value of \$138.<sup>89</sup> The average appraised value of all intestacy estates was \$4298. Testate estates were much larger, with an average value of \$18,357; the twenty smallest testate estates for which inventories were available ranged from \$50 to \$1000 with an average of \$530.<sup>90</sup>

In four of the probate files, all involving men,<sup>91</sup> the decedent was an attorney.<sup>92</sup> Two of the four died intestate, including Judge H.K.S. O'Melveny,<sup>93</sup> a probate attorney whose son Henry founded O'Melveny &

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83. Dunham found that less than 50% of estates below \$10,000 in 1950s Illinois had wills, compared to almost 100% testacy in estates over \$100,000. Dunham, *supra* note 19, at 248. The Iowa Study reported that 26% of estates under \$5000 had wills (12 of 47), while all three estates over \$1 million had wills. Iowa Study, *supra* note 19, at 1072 tbl.8. Ward/Beuscher found that only 36% of small estates (below \$5000 for 1929-44) had wills, while 92% of estates over \$50,000 had wills. Ward/Beuscher, *supra* note 19, at 412.

84. In order of size: Case 433 Alfred Armstrong (\$336,025), Case 370 James Scoville (\$323,000), Case 95 Bridget Wilson (\$285,036), Case 329 Presley Baker (\$194,930), and Case 56 Thomas B. Brown (\$105,026). Only Case 95 Wilson was female. \$100,000 in 1893 would be the equivalent of approximately \$2,252,000 in 2006.

85. Case 56 Thomas B. Brown (\$105,026) (an attorney).

86. Case 430 Johnnie Ault (\$84,600); Case 157 Josefa de Celis (\$72,638); Case 417 Jette Weil (\$65,000); and Case 106 John Scheerer (\$62,750).

87. Case 430 Johnnie Ault (\$84,600) and Case 157 Josefa de Celis (\$72,638). Ault was male; de Celis was female.

88. Case 417 Jette Weil (\$65,000) was female; Case 106 John Scheerer (\$62,750) was male.

89. See app. B tbl.1 for the twenty smallest estates in intestacy. Thus the average size of these twenty estates was about a month and a half of a male teacher's wages at the time. The average wage for a male teacher in Los Angeles County in 1891-92 was \$96 per month; the average for female teachers at that time was \$76 per month, with teachers working an average of eight and a half months per year. 1891-92 CAL. BUREAU OF LAB. STAT. 5TH BIENNIAL REP. at 209.

90. See app. B tbl.2 for the twenty smallest testate estates.

91. Clara Foltz was the first woman to be licensed to practice law in California, in 1878, but no female attorneys were in our study. Barbara Allen Babcock, *Foltz, Clara Shorridge*, in 8 AMERICAN NATIONAL BIOGRAPHY 181, 181-83 (John A. Garraty & Mark C. Carnes eds., 1999).

92. Occupations were not listed in the probate records but were determined based on the property inventory.

93. H.K.S. O'Melveny was a "Forty-niner" who established a law practice in Los

Myers, a prominent Los Angeles law firm.<sup>94</sup> Judge O'Melveny's estate was appraised at \$5885.<sup>95</sup> The other intestate lawyer, Thomas Brown, had considerably more assets at his death. His estate took twelve years to administer, and by 1905 his property, including over 100 lots of real property and a law library, was appraised at \$298,659.<sup>96</sup> For the attorneys dying testate, one had an estate appraised at \$5000 and the other at \$23,718.<sup>97</sup>

One hundred and eighty-four out of 235<sup>98</sup> decedent files (78%) containing an inventory included at least one parcel of real property. Fifty-one files (22%) had only personal property to be probated and no real property.<sup>99</sup> There was a small difference between testate and intestate files containing real property: 80% of those with wills had real property (84 of 105) compared with 77% of those dying intestate (100 of 130).<sup>100</sup> Decedents with a surviving spouse, whether testate or intestate, were more likely to leave real property than their single counterparts, with 82% to 85% of married decedents leaving real property compared with about two-thirds of single people leaving real property in their probate estates.<sup>101</sup> Women were more likely to leave a probate estate containing real property, but this is principally because the vast majority of women dying intestate (31 of 34, or 91%) had real property.<sup>102</sup> The percentage of those with real

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Angeles in 1869, built "one of the finest residences in the city," and was elected District Judge in 1872. SPALDING VOL. 1, *supra* note 25, at 174. Judge O'Melveny had his own probate firm, Graves, Shankland & O'Melveny, and he is listed as the attorney of record in some of the 1893 probate files such as Case 108's William Cochran. Judge O'Melveny's wife, Annie, perhaps because of the experience of her husband dying intestate, executed a will on July 31, 1894, eight months after her husband's death. She died Sept. 29, 1894 (Case 772).

94. E-mail from Seth Aronson, attorney, O'Melveny & Myers LLP dated Aug. 30, 2005 (on file with the author). For a history of H.W. O'Melveny's law firm, see WILLIAM A. SPALDING, 2 HISTORY AND REMINISCENCES OF LOS ANGELES CITY AND COUNTY, CALIFORNIA 29-30 (William A. Spalding ed., J.R. Finnell & Sons Pub. Co. 1931) (1931) [hereinafter SPALDING VOL. 2].

95. Case 390 H.K.S. O'Melveny's estate included three parcels of real property appraised at \$2700, and personal property worth a total of \$3185, with a law library valued at \$400 and 225 shares of stock of Exposition Company valued at \$1500.

96. Case 56 Thomas B. Brown. Survived by his wife and six minor children. His estate was originally appraised at \$86,490 in real property and \$18,536 in personal property, all his own separate property, with \$26,537 in debts.

97. Case 372 William Wade's estate was appraised at \$5000 and included a law library and copyrights on four law books that he authored on the subjects of notice, retroactive laws, mining law, and attachments. Case 110 Alexander McCoy left real property appraised at \$9000 and personal property worth \$14,718. For an agreement varying the distribution of McCoy's property see *infra* note 208.

98. Eleven of the 246 files (testate and intestate) for eight men and three women did not contain an inventory and were excluded from this section, leaving 235 files.

99. Two hundred and thirty-five total estates with an inventory (105 testate, 130 intestate).

100. See app. A fig. 4.

101. See app. A figs. 5-7.

102. See app. A figs. 8-10.

property was higher than found in other studies, where 26% to 70% of the estates contained real property.<sup>103</sup>

Nonresidents have been included in all of the tallies of those dying with or without real property.<sup>104</sup> If we discount nonresidents, 85% of married testate decedents and 65% of single testate decedents had real property in their probate estates. These numbers are not significantly different from those above. The same holds true for those dying intestate: If we calculate only the California residents, 82% of married intestate decedents had real property while 65% of single intestate decedents had real property.

Many of the wills were either entirely handwritten and subscribed by two witnesses<sup>105</sup> or were on printed forms with the blanks filled in by hand.<sup>106</sup> Ten of the 108 wills (9%) were holographs<sup>107</sup> and thus entirely handwritten by the testator.<sup>108</sup> While a few wills<sup>109</sup> were typed, this was not the common practice in Los Angeles in 1893. The typewriter, first

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103. The Iowa Study from 1963-64 reported a low of 26% of probate files with real property in urban Linn County, compared to rural areas of Van Buren County (51% with real property), Cedar County (57%) and Grundy County (59%). Iowa Study, *supra* note 19, at 1060. Dunham found that 50% of the Illinois estates in the 1950s had real property. Dunham, *supra* note 19, at 266. Browder reported that 53% of the Michigan estates in 1963 included real property. Browder, *supra* note 19, at 1320. Friedman's study of probate proceedings in 1964 California noted that 65% of the testate estates, and 70% of the intestate estates, included real property. Lawrence M. Friedman, Christopher J. Walker & Ben Hernandez-Stern, *The Inheritance Process in San Bernardino County, California, 1964: A Research Note*, 43 HOUS. L. REV. 1458 (2007).

104. One might assume that nonresidents would always have real property in their probate estates, but that is not the case for testate decedents: Three nonresidents (out of eleven) had probate estates consisting entirely of personal property. For those dying intestate, two single decedents had real property, and seven married decedents had real property. All the nonresident intestate decedents had real property.

105. See, e.g., Case 101 Anna Ogier; Case 114 Emily Yoakam; Case 206 George William Spawforth; Case 210 Theodore Froehlinger; Case 236 Mary Ellen Peterson; Case 243 Charles Sarraute; Case 298 John Eichenberger; Case 302 Julia Miller; Case 343 Jacob Stengel; Case 356 Hermann Berls.

106. See, e.g., Case 10 Charlotte Maxwell; Case 15 Maria Herera; Case 24 James Marshall Duncan; Case 29 Abby Hall; Case 110 Alexander McCoy, a lawyer; Case 212 James William Earle Stewart; Case 226 Lydia Cleveland; Case 300 William Wilson; Case 309 John Dunn; Case 315 Horace Barker; Case 321 Terrance Kenney; Case 342 Antoine Charvoz; Case 345 David Mell.

107. In 1893 these wills were called olographs.

108. Case 4 Patrick Conroy; Case 30 Eugenie Woodward; Case 100 J.F. Johnson; Case 228 Jesse Burks; Case 297 Arthur Morgan; Case 310 Adelaide Gifford; Case 314 Thomas Rhodes; Case 329 Presley Baker; Case 366 C.U. Mueller; and Case 371 Esther Foote.

109. See also, e.g., Case 229 Antonio Ginocchio, Case 408 Elias Bixby and Case 417 Jette Weil for examples of typed wills. In the case of Bixby's will, blanks left in the typed document were filled in by hand. Conversely, many court documents such as will contests and objections were typed, but we found instances of handwritten documents filed by attorneys. See, e.g., Case 129 Christian Luckerman, in which the "Objection To Setting Apart Homestead," filed by an attorney on behalf of the decedent's son, was entirely handwritten. In the vast majority of files, the Certificate for Proof of Will and the Inventory and Appraisement were on printed forms filled in by hand.



patented in England in 1714, was manufactured for business use in 1874.<sup>110</sup> By 1893, typewriters could operate with both lower and upper case letters<sup>111</sup> and the typist could actually see what was being printed on the paper.<sup>112</sup> Nonetheless, "[t]ouch typing was slow in its early progress and before the [18]90s was practiced only by operators of exceptional skill."<sup>113</sup>

No unusual patterns emerged from those who had holographs rather than attested wills. Three women<sup>114</sup> and seven men<sup>115</sup> executed holographs, roughly equal to their percentages for wills as a whole. Two of the women and five of the men were married, again similar to their overall representation in the study. One man died the same day he executed his holograph,<sup>116</sup> while another died the following day.<sup>117</sup> Two more died within ninety days of execution of their holographs; a total of seven of the nine executed their wills within a year of death. The remaining two were executed well before death.<sup>118</sup> The person with the largest estate left in a holograph, Case 329's Presley Baker with an estate of \$194,930, executed his will eighty-two days before he died.

The majority of wills, whether holographic or attested, were executed within a year of death. Some studies have found that writing a will may be associated with physical health conditions or depression,<sup>119</sup> and "requires an acknowledgment that one is going to die."<sup>120</sup> Given the state of medical knowledge in 1893, a seriously injured person would be well aware of impending death.<sup>121</sup> Twelve of the wills (11%) were executed within three days of death.<sup>122</sup> Married men were the most likely to execute a will just before death; only one woman (out of thirty-one female testators) was in

110. 22 ENCYCLOPÆDIA BRITANNICA 644-45 (14th ed., Encyclopædia Britannica Company, Ltd. 1929).

111. A shift-key typewriter was first marketed in 1878. *Id.*

112. Before 1883, the line of text was visible only by raising the typewriter carriage. *Id.*

113. ENCYCLOPÆDIA BRITANNICA, *supra* note 110, at 644-45.

114. Case 30 Eugenie Woodward; Case 310 Adelaide Gifford; and Case 371 Esther Foote. Woodward and Gifford were survived by a spouse.

115. Case 4 Patrick Conroy; Case 100 J.F. Johnson; Case 228 Jesse Burks; Case 297 Arthur Morgan; Case 314 Thomas Rhodes; Case 329 Presley Baker; and Case 366 C.U. Mueller. All but Conroy and Mueller were survived by a spouse.

116. Case 297 Arthur Morgan, with \$6120 in assets.

117. Case 366 C.U. Mueller, with \$800 in assets.

118. Case 228 Jesse Burks (689 days before death); Case 30 Eugenie Woodward (2529 days before death).

119. Marsha A. Goetting & Peter Martin, *Characteristics of Older Adults with Written Wills*, 22 J. OF FAM. & ECON. ISSUES 243, 246 (2001).

120. *Id.*

121. For example, Case 95's Bridget Wilson, seriously burned in a fire, most likely knew she was dying when she executed her will three days before her death. Case 366's C.U. Mueller certainly anticipated his death, executing his will and suicide note the day he took his life.

122. Only 4% (eighteen wills) in the Sussman study were executed within three days of death. SUSSMAN, *supra* note 19, at 66 n.13.

this group.<sup>123</sup> Thirty percent of the wills (32 of 108) were executed within thirty days of death.<sup>124</sup> Forty-three percent (46 of 108) were executed within three months of death, and 58% (63 of 108) were executed within a year of death. Thus, California testators in 1893 executed their wills at a time period before death somewhat more comparable to New Jersey testators in 1875 rather than those in 1900. Friedman found that 64% of the 1875 New Jersey wills were less than a year old, while 51% of the 1900 wills were so executed.<sup>125</sup> The trend toward executing a will and then living longer continued in the two later studies: Dunham found that one-third of the wills in his 1953-57 study were less than one year old,<sup>126</sup> while the much larger Sussman study of wills filed in 1964-65 found only 14.6% were less than a year old.<sup>127</sup>

The files reveal no apparent bias in naming a spouse to oversee the administration of the estate. Seventy married testators (fifty-two men and eighteen women) executed a will that named an executor. Seventy-one percent of the men (37 of 52) named their wives as executrix (including three cases in which another person was named co-executor or executrix), and two-thirds of the women (12 of 18) named their husbands, with two of the twelve women testators naming a co-executor. These results contrast sharply with those from Bucks County Pennsylvania 1891-93, in which 58.5% of married men excluded their wives as executrices of their wills.<sup>128</sup> Some bias may appear in the cases in which someone other than the spouse was named as executor. In the twenty-one cases where a married testator named someone other than their spouse, the most common nomination was to a son. Six men and two women selected a son; a third woman nominated her son and daughter as co-executors. One married man named his daughter, and one married woman named her daughter-in-law and not her son. The remainder (eight men and two women) nominated men to the position.

Six testators (one woman and five men) signed their wills by mark.<sup>129</sup> Interestingly, in a seventh will by a male testator, both female witnesses signed by mark.<sup>130</sup>

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123. Of the twelve testators who executed a will within three days of their death, eight were married men, three were single men, and one was a married woman (Case 95 Bridget Wilson).

124. Of the thirty-two testators who executed a will within ninety days of death, women are again underrepresented as only seven women (22% of all women testators) are in this group.

125. Friedman, *supra* note 6, at 37.

126. Dunham, *supra* note 19, at 279.

127. SUSSMAN, *supra* note 19, at 66 tbl.4-3.

128. SHAMMAS ET AL., *supra* note 1, at 114.

129. Case 2 Gregoria Reyes de Bentley; Case 57 Westley Roberts; Case 243 Charles Sarraute; Case 300 William Wilson; Case 413 Jean Domblides; and Case 424 Jean Goyeneche. For details of the will contest in Case 2, see *infra* note 186.

130. Case 321 Terence Kenney. Because both witnesses signed by mark, a third

Seven women and five men left some or all of their property in trust, amounting to a little over 10% of the wills in the study. Three (all women) left property in trust for their minor children;<sup>131</sup> seven (three women, four men) left trusts for their nieces and nephews, grandchildren, cousins and other relatives;<sup>132</sup> and two (one woman, one man) left property in trust for their spouses.<sup>133</sup>

Several testators, both male and female, included instructions for their burials. One man, survived by his wife, asked that he be "decently buried by the side of my dear sister Sarah;"<sup>134</sup> another asked that he be buried in a Missouri cemetery with his wives (plural!).<sup>135</sup> One woman expressed her fear of premature burial in a will executed three months before her death at age 70:

First. When I am proven to be positively dead by being kept till the fourth day and the doctors prove and assert that life is extinct, I wish my body prepared for cremation, as those who attend to the business of cremation direct and require it to be, and then I direct my husband's bones exhumed and cremated with my body and when both are consumed to ashes I wish a metal box to be made and the ashes laid therein and then be sent by express to Charleston S.C. to the care of Dr. Thomas Ogier, Dr. Willis Ogier or Dr. John Forrest to be placed in the tomb or grave of my husband's mother.<sup>136</sup>

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witness was required to write in the names of the witnesses.

131. Case 137 Sarah Eustaphieve (trust for her mother and her son); Case 374 Katie Sherman (trust for her 5-year-old daughter); Case 387 Helen Lowth (trust for her two children).

132. Case 68 John Greenleaf Whittier (nieces and nephews, cousins and others); Case 77 George Hutchinson (trust for the support and education of his grandniece); Case 88 Mary Saunders (grandchildren); Case 227 Mary Rheinart (grandchildren); Case 377 Willet Doty (grandchildren); Case 408 Elias Bixby (grandchildren); Case 423 Henrietta Losee (nieces and nephews).

133. Case 228 Jesse Burks (trust created in a holographic will for his wife and four children) and Case 236 Mary Ellen Peterson (trust for her husband).

134. Case 364 William Penn Evans. The testator was most likely a Quaker, as his will went on to direct that the stones at his grave be similar to those of his sister, "care being taken that the height and size are no greater, so that Friends may not be grieved." His codicil executed in 1888 directed that he be buried where convenient if he did not die in Pennsylvania, but he died in Philadelphia. Evans, the valedictorian of the 1871 class at Haverford College, was considered one of the founders of Malvern, Pennsylvania, where he owned a flour mill. James Edward Maule, *Some Prominent Members of the American Maule Family*, <http://www.maulefamily.com/maule50.htm> (last visited Sept. 14, 2007).

135. Case 408 Elias Bixby. The will, executed in Los Angeles in 1893, stated: "THIRD: I direct that, wherever I may die, that my body shall be properly embalmed and transported to the . . . state of Missouri and be interred in the lot belonging to me . . . , the same being the lot where my wives and children are buried."

136. Case 101 Anna Ogier.

#### IV. PATTERNS OF DISTRIBUTION IN WILLS

A major reason to execute a will is to distribute one's estate in a way that differs from intestacy laws. Not surprisingly, most of the 108 testators did just that. The most common variation from the intestacy scheme was to leave all property to the spouse. This was especially true for men: Twenty-one out of fifty-two married men (40%) left all property to their wives; another eight married men left significantly more to their wives than to their issue. By contrast, only four out of eighteen married women (22%) left all of their separate property to their husbands;<sup>137</sup> the husbands, of course, already owned all the community property so the wives may have felt less of a need to provide for them.

Also common was leaving a life estate in some or all of the property to the spouse, with a remainder to the testator's issue. Three married women (17%) and eleven married men (21%), many with ties to common law states, used life estates to give property to their spouses in their wills.

Three married women (17%) left nothing to their spouses, as did three married men (6%).

The contrast between men and women is more striking when we examine testators who were not survived by a spouse. At least five, and possibly six, of the seven men favored certain children or grandchildren over others.<sup>138</sup> No female testator so favored one child or grandchild over another.

When testators had no spouse or issue, half of the men (9 of 18) left all their property to their families, while only one out of six women did so. Five female testators and four male testators split their property among their family and others. Finally, five male testators excluded all relatives and left their entire estate to others, while no women did so.

An inheritance tax enacted in California in March 1893 may have had a slight effect on wills written later that year. By statute dated March 23, 1893, California taxed inheritances, bequests, and devises to a person other than a parent, spouse, lawful issue, sibling, wife or widow of a son, the husband of a daughter, or any adopted child.<sup>139</sup> If a testator were aware of this law, she might be dissuaded from leaving property outside the family since it would be subject to tax. The law was repealed in 1905.<sup>140</sup>

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137. Sussman found no differences between male and female testators in leaving all to their spouses. SUSSMAN, *supra* note 19, at 89.

138. Dunham found in his study of wills from 1953 and 1957 that twenty-four out of thirty-five wills (69%) did not distribute property equally to all the children. Dunham, *supra* note 19, at 254.

139. Inheritance Tax Act of Mar. 23, 1893, ch. 168, 1893 Cal. Stat. 193-98 (repealed 1905).

140. *Id.*

## A. TESTATORS SURVIVED BY SPOUSE AND ISSUE

Regarding the couple's community property, California law in 1893 treated a surviving wife much differently than a surviving husband, entitling a surviving wife to just one-half of the community property but a surviving husband to all of it. We anticipated that many married men who wrote wills would give more of the property to their surviving spouse, especially in cases where their children were very young and thus unable to manage property on their own. We further anticipated that a married woman, who could only dispose of her separate property, might omit her husband, confident that his owning 100% of the community property would be enough for his support.<sup>141</sup> The number of women survived by a husband and issue is quite small (only ten in our study) compared with forty-one men who left a wife and issue; but we can tentatively conclude that, as hypothesized, married men were more likely to give most or all of their property to the spouse than were married women.<sup>142</sup> Almost half of the men (20 of 41) left most or all of their property to their wives, while only one out of ten women left all to her husband (and that will was successfully contested by her children). Fifteen out of forty-one men (37%) divided their property between the spouse and issue, either outright or by giving their wives a life estate; half of the women (5 of 10) did so. Just three men out of the forty-one (7%) gave considerably more to their issue than to their wives, and three omitted their wives entirely, compared to three women (30%) who omitted their husbands. We had expected more women to entirely omit their husbands, but again, the sample size is small.

### 1. Testators Survived by Spouse and Issue Who Left All to the Spouse

Out of a total of fifty-one decedents survived by a spouse and issue, 29% (fourteen men and one woman) left all or virtually all of the estate to the spouse.<sup>143</sup> In four cases,<sup>144</sup> the testator included explicit language as to

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141. Judge and Hrdy, in their study of wills from 1890 to 1984, attributed a different reason for male/female differences in testation:

We suggest that age/sex specific fertility and mortality rates are the bases of these predilections [for men to leave property to their wives, and women to leave property to their children]. Males are not depriving their offspring by leaving resources to the mothers of their children as the physiological fact of menopause makes it unlikely that such mothers will remarry and it is likely that they will distribute resources inherited from the husband faithfully to their mutual offspring. In contrast, a widower could remarry and produce a second family or merely leave his estate largely to that second wife rather than children by a prior marriage.

Judge & Hrdy, *supra* note 78, at 518.

142. Judge and Hrdy's one-hundred-year study of 1538 wills came to a similar conclusion, finding that, for decedents who were survived by both a spouse and issue, "females were more inclined to direct resources to children than to spouses, while males channeled resources to a surviving wife." *Id.* at 507.

143. In contrast, in Dunham's study of twenty-two testate estates where the deceased was survived by a spouse and issue, 100% left all to the spouse. Dunham, *supra* note 19, at

the reasons for his estate plan. Thomas Rhodes' will exemplifies the typical language:

*Case 314 Thomas Rhodes. Survived by his wife Josefina and his eleven-year-old son. His holograph executed forty-nine days before his death gave his estate appraised at \$17,700 to his wife. "I have made no bequest to my son George W.H. Rhodes as I know that my wife will care for him."*<sup>145</sup>

In many of the remaining cases in which the testator devised all property to the surviving spouse, the reasons can be surmised from the surrounding circumstances. In five cases, the testator most likely assumed that his wife would take care of their children;<sup>146</sup> in other instances the testator may have wished to provide for his elderly wife rather than his adult children.<sup>147</sup> In two cases, the omitted children were from a prior marriage.<sup>148</sup>

One testator included a curious provision:

*Case 409 Joshua King. Survived by his wife and daughter. His attested will executed two days before his death gave his entire estate of \$1500 to his wife, adding, "[i]t is also intended by this will that my daughter shall not be debarred of any of her legal rights in and to the estate herein bequeathed." This gave the daughter nothing.*<sup>149</sup>

In contrast to the fourteen men who left all property to their wives and omitted their issue, only one woman left everything to her husband. Her will was successfully contested by her children on the grounds that the decedent had been poisoned by her spouse.<sup>150</sup>

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252. Browder found that twenty-six out of fifty-four testators (48%) left everything to their spouses and omitted surviving issue. Browder, *supra* note 19, at 1307.

144. In addition to Case 314 Thomas Rhodes, the other three were Case 128 John George Wilhelm, Case 391 Alfred Hanna, and Case 411 Andrew Wilson Potts.

145. Case 314 Thomas Rhodes.

146. Case 41 Frank Tolles. Survived by his wife and 6-year-old daughter. Case 86 Lester McKnight. Survived by his wife and three minor children. Case 100 J.F. Johnson. Survived by his wife and eight children ages four to twenty-three. Case 242 Lawrence McCully. Survived by his wife and daughter. Case 297 Arthur Morgan. Survived by his wife and three minor children.

147. Case 129 Christian Luckerman. Survived by his wife (age sixty-six) and his four children (ages twenty-seven to forty-two). Case 130 William Steele. Survived by his wife (age seventy-two) and children.

148. Case 348 B. Homer Fairchild. Survived by his wife and the children of a prior marriage. His attested will executed over nine years before his death left his estate of \$7685 to his wife. Case 357 Morris Gustin. Survived by his wife and unnamed children of a prior marriage not living in California. His attested will executed two years before his death left his estate of \$1177 to his wife.

149. Case 409 Joshua King.

150. See *infra* note 186 for the will contests in Case 2 Gregoria Reyes de Bentley.

## 2. Testators Survived by Spouse and Issue Who Did Not Leave All to the Spouse

Fifty-nine percent of the fifty-one testators survived by spouse and issue, six women and twenty four men, divided their property in some way among their survivors. Three of the six women<sup>151</sup> and eleven of the twenty-four men<sup>152</sup> gave their spouses a life estate with a remainder to the children. Another six men gave more to their wives than to their children; no woman so favored her husband.<sup>153</sup> Four of these six wills were contested.<sup>154</sup> Two testators, both men, simply wrote that their property should go by the laws of intestacy,<sup>155</sup> and four (two women and two men) directed that their property go equally to their spouses and children.<sup>156</sup> Three men<sup>157</sup> and possibly one woman<sup>158</sup> gave more to their children than to their spouses. In three of these four cases the testator was from a separate property state and died either a California resident or owning real property in California.

In six cases where a testator was survived by spouse and issue, three women and three men left nothing to their spouses in their wills. Only one of the six prompted a will contest, despite language in the will attempting to explain why the husband was given nothing.<sup>159</sup> In several of the remaining cases, we can guess why the spouse was left nothing. In one case, the testator's wife had been committed to an insane asylum,<sup>160</sup> in another, the wife's will reflected a common estate plan with her husband, providing for those he had not provided for in his will.<sup>161</sup> One testator left all of his small estate to his youngest daughter, omitting his wife and older

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151. Case 58 Lucia Pierce; Case 88 Mary Saunders; and Case 236 Mary Ellen Peterson.

152. Case 65 Michael Wagner; Case 73 Michael Brophy; Case 123 David Knapp; Case 148 James McGaugh; Case 154 Amos Scofield; Case 161 William Wilson; Case 213 Louis Sexton; Case 300 William Wilson; Case 309 John Dunn; Case 350 Aaron Frew; Case 416 James J. Donovan.

153. Case 57 Westley Roberts; Case 135 John Steinhauer; Case 216 Charles Langford; Case 229 Antonio Ginocchio; Case 304 Charles Pinney; Case 410 Alexander Mecredy.

154. See Section E, *infra* on will contests.

155. Case 356 Hermann Berls and Case 433 Alfred Armstrong.

156. Case 29 Abby Hall and Case 310 Adelaide Gifford were the two women; Case 72 George Lorenz and Case 228 Jesse Burks were the two men.

157. Case 69 George Le Valley (resident of Nebraska); Case 298 Reverend John Eichenberger (resident of California); and Case 370 James Scoville (resident of Illinois when he executed his will; died a California resident owning real property in Illinois of unknown value).

158. Case 405 Eliza Lincoln. Her attested will, executed in 1886 in Massachusetts, gave her real property in Massachusetts to her husband along with all furnishings, shares of stock and her diamonds, and most of the rest to her son. Her property, subject to appraisal in California, was valued at \$46,200; amount in Massachusetts is unknown.

159. See *infra* note 186 for the will contest in Case 114 Emily Yoakam.

160. Case 210 Theodore Froehlinger.

161. Case 227 Mary Rheinart.

daughter without explanation.<sup>162</sup> One woman was admirably discreet about the omission of her husband:

*Case 417 Jette Weil: Survived by her husband and seven children. Her attested will executed nine months before her death gave all her estate, appraised at \$65,000, to her children, stating "For reasons better known to my-self I do not will any of my estate to my husband, Jacob Weil." A daughter and a son were named co-executors.*<sup>163</sup>

One of the six wills that omitted the spouse contained language that could easily have provoked a will contest, but did not:

*Case 424 Jean Goyeneche: Survived by his wife and two minor children. His 1889 attested will left his entire estate, appraised at \$3950, to his children, and named Leonard Labory as executor without bond. The testator asked the court to appoint Mr. Labory as the children's guardian during their minority, adding "I respectfully oppose the appointment of their mother as such guardian for the reason that she is ignorant, incompetent and has other ties." The will was signed by mark.*<sup>164</sup>

#### B. TESTATORS SURVIVED BY SPOUSE BUT NO ISSUE

Eight married women and eleven married men were not survived by issue. All nineteen left at least some property to the surviving spouse but consistent with our hypothesis, women were less likely to leave everything to their spouse. Three women out of eight (38%) left all to their husbands,<sup>165</sup> compared with seven of the eleven men (64%) who left all to their wives.<sup>166</sup> Thus, the behavior of the male testators was similar to

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162. Case 345 David Mell.

163. Case 417 Jette Weil.

164. Case 424 Jean Goyeneche.

165. Case 30 Eugenie Woodward. Survived by her husband and no issue. In a holograph executed in 1886 she left all of her \$8000 estate to her husband. Case 146 Mattie Prairo. Survived by her husband, two brothers and a sister. In an 1891 attested will she left her entire estate, appraised at \$2650, to her husband and named him executor. Case 419 Elsie Herminghaus. Survived by her husband. Her 1885 attested will left all her property, valued at \$325, to her husband, who died six weeks later (Case 401).

166. Case 46 Joshua Sands. Survived by his wife and three siblings. His attested will executed in 1869 gave all his estate, appraised at \$8767, to his wife, and named her as executrix. Case 50 Charles J. Field. Survived by his wife and one sister. His attested will executed six years before his death gave his estate, appraised at \$4750, to his wife, and named her as executrix. Case 106 John Scheerer. Survived by his wife, his brothers and sisters. His attested will executed two years before his death gave all of his estate, appraised at \$62,750, to his wife and named her as executrix. For details of the will contests brought by his siblings see *infra* note 197. Case 315 Horace Barker. Survived by his wife, his sister, three nephews, and a niece. His attested 1887 will gave all of his estate, appraised at \$4,737, to his wife and named her executrix. Case 364 William Penn Evans. Survived by his wife. His attested 1888 will gave all of his estate, appraised at \$22,270, to his wife and named her executrix. For his unusual burial instructions see *supra* note 134. Case 372 William Pratt Wade. Survived by his wife. His attested will gave all of his estate, appraised at \$16,000, to his wife. The will was not in the file so the date is unknown; the terms appear



Browder's findings from 1963 Michigan, in which nine out of thirteen wills (69%) left all property to the spouse where no issue survived.<sup>167</sup> Judge and Hrdy also found that married men with no issue or parents left more to their wives than married women did to their surviving husbands.<sup>168</sup>

Married women with no descendants were much more likely than married men to include others besides their spouse in their wills. Five out of eight women (62%)<sup>169</sup> and three of the eleven men (27%)<sup>170</sup> left some property to other family members and friends. Finally, one of the eleven men left his property to his wife and her son (his stepson).<sup>171</sup>

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in the decree of distribution. Case 413 Jean Domblides. Survived by his wife. His attested will, executed the day he died and signed by mark, gave all of his estate, appraised at \$3925, to his wife and named her executrix.

167. Browder, *supra* note 19 at 1308. A tenth will left all property to the spouse except for a small bequest to the testator's sister. *Id.*

168. Judge & Hrdy, *supra* note 78, at 507.

169. Case 95 Bridget Wilson. Survived by her husband. Her will executed three days before her death gave property to her husband, friends, and charities. For the will contests see *infra* note 184. Case 226 Lydia Cleveland. Survived by her husband, two sisters, and a brother. Her attested will executed ten months before her death left all of her property, appraised at \$3375, to her husband and two sisters in equal shares "in the expectation that they will faithfully conform to such informal written requests as I shall leave, to have them jointly distribute to others in whom I am also interested the property herein devised and bequeathed to them." Her husband was named as executor. Case 302 Julia Miller. Survived by her husband, mother, and brother. In an attested will executed eleven days before her death at age fifty, she named her husband as co-executor but he refused to serve. The will devised to her husband all her real property in Los Angeles County (two acres appraised at \$600). Her brother was devised all her real property in Oneida County, New York (value unknown), and her mother was given all her personal property in New York for her life, then to the testator's husband. Her husband was named the residuary beneficiary. Case 368 Eliza Maclean. Survived by her husband, her sister, and two nieces. Her attested will executed five days before her death devised her real property (appraised at \$4400) to her sister Cora Greeley and her two nieces Ethel Hartley and Bertha Hartley, and all the rest of her property (appraised at \$86) to her husband. Her husband and sister were named co-executors. Case 317 Helen Rosenburger. Survived by her husband Simon and her cousins. Her attested will executed almost a year before her death made specific bequests totaling \$3000 in cash plus some jewelry to her cousins and friends, and all the rest of her estate, appraised at \$25,500, to her husband, who was named executor.

170. Case 110 Alexander McCoy. Survived by his wife, two brothers, a sister, and the children of a deceased sister. His attested will executed a year before his death gave \$200 per year to his sister Mattie McCoy for life, \$50 each to the surviving children of his deceased sister Elizabeth, and canceled the notes from his two brothers. All the rest of his estate, appraised at \$23,718, went to his wife, who was named executrix. For an agreement altering the distribution of the estate see *infra* note 208. Case 215 Paul Kern. Survived by his wife and three nieces. His attested will executed three days before his death gave \$1000 to each niece, and all the rest to his wife. His wife was named executrix of the estate, appraised at \$39,796. For litigation on the estate see *infra* note 200. Case 243 Charles Sarraute. Survived by his wife, and a nephew in France. His attested will, executed six days before his death, gave all his personal property (appraised at \$250) and a life estate in his real property (appraised at \$7000) to his wife. Upon his wife's death, the real property was to go to his nephew. Testator signed by mark. For his wife's will contest see *infra* note 192 and accompanying text.

171. Case 329 Presley Baker. Survived by his wife and stepson. In a holograph

## C. TESTATORS SURVIVED BY ISSUE BUT NO SPOUSE

Six women and seven men died with issue surviving them but without a surviving spouse. All thirteen provided for their children and, in some cases, grandchildren, but what is striking is that at least five of the seven men did not treat their children equally. Two men left all their property to a daughter, omitting their other children.<sup>172</sup> Three men provided for their children and grandchildren, but not in equal shares.<sup>173</sup> One man and possibly two treated their issue equally,<sup>174</sup> as did four women.<sup>175</sup> The other

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executed three months before his death he gave \$25,000 to his stepson and the rest of his estate, appraised at \$194,930, to his wife. His wife was named as executrix.

172. Case 24 James Marshall Duncan. Survived by two adult daughters. His attested will executed two years before his death gave all of his property, appraised at \$720, to his younger daughter and did not mention his older daughter, who thus took her intestate share of half. Case 326 Richard Chippendale. Survived by four children and three minor grandchildren (the children of a deceased daughter). His attested will executed ten years before his death left all his estate to his daughter Maria and named her executrix. While the estate was appraised at \$915, the total value after debts was \$590.

173. Case 5 John W. Polley. Survived by three adult children. His attested will executed in 1889 devised half of his real property in California to his daughter, and one-quarter each to his two sons. His three houses and lots in Chicago were devised to his daughter Alice for her life, and if she died without issue, to his two sons. His daughter was given no power to mortgage, encumber, or in any way convey the property, or to transfer an interest therein, or to assign her right to receive the rents and income therefore without the written consent of the executors and his sons. All personal property and household furniture were willed to his daughter. His property in California was appraised at \$18,250. For an agreement varying this distribution see *infra* note 208. Case 78 Jordan Neel. Survived by six adult children. A seventh child was given a share in the will but predeceased the testator. A resident of Pennsylvania, he executed an attested will in that state five months before his death in Los Angeles that favored one son, Archibald, by giving him a 390-acre farm in Pennsylvania for his life, then to be equally divided among Archibald's children. He also singled out one daughter, Flora, for a specific bequest of \$2000 worth of Marine National Bank of Pittsburgh stock. The rest of his property was also divided unevenly: While all seven children were given a share, four received their share outright, while the other three were given a life estate with the remainder to their surviving children. His real property in California was appraised at \$6000. For litigation on this estate see *infra* note 201. Case 377 Willet Doty. Survived by his son and four grandchildren (children of a deceased daughter). His attested will executed seven months before his death gave \$250 to his granddaughter Mabel and \$50 each to his other three grandchildren, to be held in trust by their guardian, \$200 to his son, and his personal property to a friend. If anything was left, he directed his executor "to use the remainder of my estate in helping poor and deserving persons." His estate was appraised at \$1760.

174. Case 4 Patrick Conroy. His 1888 attested will gave his property in Santa Ana, California to his two sisters, and all the rest of his property to his two minor children. An 1892 holograph named different executors and guardians of his children. The testator died a resident of Idaho but owned ninety-five lots in California, and his estate probated in Los Angeles was valued at \$20,547. Both wills were contested; see *infra* note 184 and accompanying text. Case 408 Elias Bixby. Survived by his son, daughter, and grandchildren. His attested will executed six months before his death gave certain real and personal property in California to his son, and his real property and some personal property in Missouri to his daughter. He also designated a parcel of real property in California to be held in trust for his son's children. His property in California was appraised at \$5580. Because the value of the Missouri property is unknown, we cannot tell if the son and daughter received equal amounts.

two women each had only one child, who was provided for along with other relatives.<sup>176</sup>

#### D. TESTATORS WITH NO SURVIVING SPOUSE OR ISSUE

Six women and eighteen men died testate without a surviving spouse or issue. As one would expect, these testators usually remembered other family members in their wills. One woman<sup>177</sup> and seven men<sup>178</sup> left their

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175. Case 10 Charlotte Maxwell. Survived by three children and two grandchildren. Her attested will executed twelve days before her death gave \$1000 to each grandchild and all the rest of her property, appraised at \$3200, to her four children. For disposition of the estate see *infra* note 208. Case 15 Maria Herera. Survived by two adult daughters and three grandchildren. Her attested will executed eight days before her death at age eighty-five left everything to her daughters and grandchildren in equal shares. The grandchildren each had a different last name so they are probably children of three deceased daughters. Her estate was appraised at \$320. Case 230 Mary Perham. Survived by three grandchildren. Her attested will was first executed in 1878 in Vermont, with a codicil executed in California in 1891 leaving her estate to her sisters, her children and her grandchildren. Since her sisters and children predeceased her, the grandchildren each received one-third of her estate, valued in California at \$13,760. Case 387 Helen Lowth. Survived by two children (one from a previous marriage, the other still a minor). Her attested will executed three years before her death gave all her property, appraised at \$3368, to her two children in trust.

176. Case 137 Sarah Eustaphie. A New York resident, she was survived by her mother, brother and son. Her attested will executed two years before her death gave \$500 outright to her brother and created two trusts: A \$6000 trust with the income payable to her mother, and a residuary trust for her son. Her property in California was appraised at \$3910. Case 374 Katie Sherman. Survived by her mother and five-year-old daughter Helen. Her attested will executed three months before her death gave \$1000 to her mother; the rest of the \$44,295 estate, after payments of \$40 per month to the testator's mother, was to be held in trust for Helen, with payments of principal at age eighteen and age twenty-five.

177. Case 103 Caroline Warner. Survived by two sisters and three brothers. Her 1874 attested will gave \$1 each to sister Nancy, sister Mary, and niece Mary, and all the rest of her property, appraised at \$2321, to her three brothers.

178. Case 77 George Hutchinson. Survived by his brother and his grand niece. In an attested will executed five months before his death, he named his brother as executor and left all his property, appraised at \$5625, in trust for his grandniece for her support and education during her minority. The trust provided for half of the property to be paid to his grandniece at age twenty-one, another part at age twenty-five, and the rest at age thirty. Case 92 Hiram Backus. A resident of Arizona, his attested will was executed in Tombstone twelve days before his death. His will gave everything to his only relative, a sister, and named her executrix. His property in California was valued at \$1800. Case 109 John Meisgeier. A resident of Pennsylvania, his attested will was executed almost three years before his death. He left all his property, including real property appraised at \$829 in California, to his sister and named her as executrix. Case 159 William Wright. Survived by his mother and father. In his 1887 will he gave all to his mother for her sole use, free from any control by her present husband, or any future husband. His father was named as executor. His property was appraised at \$4604. Case 212 James William Earle Stewart. Survived by his mother (age fifty-eight) in Scotland, three brothers (in Los Angeles, Scotland, and India), and four sisters in Scotland. His attested will executed three days before his death left his personal property to named family members, and all the rest to "Miss Stewart of Scotland" (possibly an unmarried sister). His estate was appraised at \$1195 but only \$750 remained after his debts and expenses were paid. Case 321 Terrence Kenney. Survived by his mother and two brothers. In an attested will executed five days before his death, he left half to his mother (living in Ireland), half to his brother in Los Angeles, and "[t]o Michael Kenney my brother now in Ireland I will and devise nothing."

property solely to family members, although not always in equal shares. One man created a family member by referring to his devisee as his informally adopted son.<sup>179</sup> Another eleven testators (five women and six men), in deciding to whom to leave their property, chose among their own relatives, their spouses' relatives, friends, and charities.<sup>180</sup> Only four of the

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Two witnesses each signed by mark. His only property was one lot and a house valued at \$350. Case 343 Jacob Stengel. Survived by five siblings in Germany. His attested will executed three months before his death devised his property, appraised at \$3188, to his father, or if predeceased, to his five adult siblings in equal shares.

179. Case 400 John Buchanan. In his attested will executed at age sixty, a year before his death, he left all to Claude Buchanan at age twenty-one, stating "I have no wife nor any matrimonial relation with any woman. Therefore I give, devise and bequeath to my adopted son — (not adopted by any decree of court but reared by me and hereby acknowledged as my son) Claude Buchanan — now residing with me at my home . . ." His property was appraised at \$5200.

180. Case 68 John Greenleaf Whittier. Survived by nieces, nephews and cousins. In an attested will executed two years before his death, he made bequests to a wide variety of relatives, friends, and charities. A resident of Massachusetts, he owned one lot in Whittier California appraised at \$75. Case 97 Charles Clark Rider. Survived by his sister, brother, two nephews, four nieces, and others. In an attested will executed three days before his death he gave one-third to an unmarried sister, Sallie Rider. The rest of his \$7884 estate was to be shared equally among his brother, two nephews, four nieces, two sisters-in-law (widows of deceased brothers), a niece and nephew of his deceased wife, his wife's sister, and two other women whose relationship was not stated. Case 101 Anna Ogier. Survived by her brother, two nieces, four cousins, and her brother's grandchildren. In addition to specific burial instructions, *see supra* note 136 and accompanying text, her handwritten attested will executed two months before her death gave \$6000 to one niece, \$5000 to another niece; \$6000 to friend Maria Shorb (also named executrix), \$500 each to four cousins, and bequests of \$500 each to three religious charities. Her estate was appraised at \$45,294. For litigation regarding the administration of her estate *see infra* note 200. Case 155 John Thompson AKA Marcos Misa. Survived by his wife's granddaughter. In an attested will executed six months before his death he gave all his estate, appraised at \$550, to his wife's granddaughter, who was committed in an insane asylum. Case 293 Sarah Flanagan. Survived by her nephew. Her undated will and her codicil dated Mar. 9, 1892, were both witnessed by one person, Edith Shorb. Both gave specific amounts to friends, and the rest of her property, appraised at \$50, to her nephew. The court treated it as intestacy. Appraisers were appointed but did not file a report until the nephew resigned in 1907 and his niece was appointed administratrix. Case 361 Charles Wagner. Survived by his sister in Germany. His attested will executed two days before his death devised one-half to his sister and one-half to Miss Elsie Oberlauchering of Germany (no relationship stated). His estate was appraised at \$566. Case 366 C.U. Mueller. Decedent was a beekeeper, survived by his brother in Switzerland. In a holograph executed the day before he died, he left his personal property to George Compton and two others in Los Angeles, and the rest to his brother in Switzerland. Case 371 Esther Foote. Survived by her brother Byron Reed and nieces and nephews. Her attested will executed eleven months before she died left bequests to many relatives, their spouses and children, plus a number of friends in Los Angeles. Her estate was appraised at \$9775. Case 389 Lucinda Wishard. A resident of Indiana, she was survived by two stepchildren, her brother, and two sisters. Most of her estate went to these five devisees. A parcel of real property in Pasadena was devised to Ida Wishard, likely her sister-in-law. Her property in California consisted of two parcels worth \$300; expenses to probate the estate were \$105. Case 401 Albert Herminghaus. Survived by his siblings, nieces, and nephews. In an attested will executed at Sisters Hospital four days before he died, he left \$750 each to three brothers in the U.S. and a sister in Germany; \$750 to a niece in Germany; \$500 to a nephew in Germany; \$300 to a niece; and \$250 to his

twenty-four testators in this group, all men, left all or virtually all of their property to those outside their families; in two of these cases, the testators' families lived in France, and in the third the testator stated he had lost track of his family.<sup>181</sup> In the fourth case, the testator executed a will at age twenty-one that left all his property to his father in London, and then executed a second will twenty years later that gave his property to a colleague in Los Angeles. His estate was distributed in intestacy to his parents in England.<sup>182</sup>

#### E. WILL CONTESTS AND OTHER LITIGATION

Probate administration in 1893 was highly contentious. Formal will contests were filed in 11 of the 108 cases (10%).<sup>183</sup> In an additional eleven cases, objections were filed such as opposition to the appointment of an executor or administrator, objections to accounts, and claims debating whether property was separate or community. Proceedings in intestacy

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deceased wife's niece. Charles Kapus from the German Consulate was named executor. Many documents in the file were in German and translated. His wife had died about six weeks earlier (Case 419). His estate was appraised at \$9000. Case 423 Henrietta Losee. Survived by her mother, brother, nieces, and nephews. Her attested will executed two months before her death established a trust of \$2000 for one niece to study art; \$800 in trust to eight nieces and nephews; other specific bequests to relatives; and all the rest to Hanover College in Indiana to endow a chair in astronomy or math for her father, former professor Samuel Harrison Thomson. Her estate was appraised at \$3375.

181. Case 143 Joseph Naud. Survived by his brother and two sisters all living in France. His attested will executed eleven days before his death gave \$1 each to his three siblings and the rest, appraised at \$500, to Albert Lauzon, "my bartender." Case 223 Wells Gerry. Survived by two brothers and one sister but stated in his will that he did not know if they were still alive. He had been living with a friend and his family for many years "by whom I have been treated almost as a brother." His attested will, executed seven days before his death, gave everything to his friend's wife for all the kindness she and her family had shown. His friend was named as executor. Case 342 Antoine Charvoz. Survived by a brother in France. His attested will executed six days before his death devised his half interest in a barbershop to his partner Jules Fallonday, and the rest to the French Society of Los Angeles. His estate was appraised at \$545.

182. See *infra* note 199 and accompanying text for more information on Case 206 George William Spawforth.

183. This percentage is comparable to Ward/Beuscher's study, which found four will contests out of forty-five testate estates in 1929. Ward/Beuscher, *supra* note 19, at 415. Interestingly, this was the only year in their study in which such a large percentage of the wills were contested. In 1934, one will out of thirty-one was contested. In 1941, one will out of thirty-three was contested, and there were no contests filed in 1939 or 1944. *Id.* at 416. Thus, overall Ward/Beuscher found six contests out of 166 testate estates, or 4%. The contests were successful in two of the six cases; the objections were withdrawn in the other four. *Id.* Powell and Looker concluded that only 4% of the wills filed in New York County between 1921 and 1929 were contested. Richard R. Powell & Charles Looker, *Decedents' Estates: Illumination From Probate and Tax Records*, 30 COLUM. L. REV. 919, 931-32 (1930). More recently, Schoenblum's study of 7638 wills filed in Tennessee between 1976 and 1984 found that only sixty-six, or less than 1%, were contested. Jeffrey A. Schoenblum, *Will Contests - an Empirical Study*, 22 REAL PROP. PROB. & TR. J. 607, 613 (1987). Friedman et al.'s study of wills in 1964 California found will contests in 2% of the cases (7 of 342). Friedman et al., *supra* note 103, at 1466-67.

were also contentious, with objections filed in 10 of the 138 cases (7%). Finally, another 17 cases (7%) resulted in distributions that differed from the will (7 cases) or intestacy (10 cases) by agreement of the parties.

### 1. Formal Will Contests

In eleven cases, involving eight male and three female decedents, disappointed relatives or beneficiaries of a prior will filed will contests; in three of these cases multiple will contests were filed.<sup>184</sup> Not surprisingly, in eight of the eleven cases, the contestants were omitted spouses or children.<sup>185</sup> The omitted spouse or child initially won in six out of eight cases,<sup>186</sup> but three of the six verdicts for the contestants were subsequently overturned either by the judge (with an order for a new trial) or on appeal.<sup>187</sup> Most of the contested estates were very large, including one appraised at over \$285,000. In the smallest contested estate, inventoried at \$833, the children of the decedent successfully contended that their stepfather, the sole beneficiary of the will, had murdered their mother.<sup>188</sup>

In four will contests for two male and two female decedents, the surviving spouse was left relatively little in the will:

*Case 95 Bridget Wilson: Survived by her husband. Her attested will executed three days before her death from a fire devised \$50 per month to her husband for his life but if he married Eliza Sanchez payments should cease. Her will also made charitable gifts of \$500 to the Roman Catholic Orphans Asylum, and \$10,000 to the Roman Catholic priest of Pasadena, and numerous bequests to friends. Her original will gave the residue of her estate, appraised at \$285,037, to Alicia McMahon of England, but this was revoked by her codicil and replaced with specific devises of real property to several friends. In a highly publicized case, her husband*

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184. Case 4 Patrick Conroy. Executor and beneficiary of will number two contested will number one; children contested will number two. Case 95 Bridget Wilson. Will contested by surviving husband; codicil contested by residuary beneficiaries of will. Case 135 John Steinhauer. Will number one contested by surviving wife, will number two contested by the executor named in will number one.

185. In telephone interviews conducted with twenty-eight estate litigators, the attorneys reported that in their last five will contests, 42% of the contestants were children of the decedent, 29% were stepchildren, and 13% were spouses. Jeffrey P. Rosenfeld, *Will Contests: Legacies of Aging and Social Change*, 173, 176, 186, in *INHERITANCE AND WEALTH IN AMERICA*, (Robert K. Miller Jr. & Stephen J. McNamee eds., Plenum Press 1998).

186. Juries found for the contesting spouse in Case 135 John Steinhauer, Case 95 Bridget Wilson, and Case 114 Emily Yoakam. Juries found for the omitted child or children in Case 4 Patrick Conroy and Case 216 Charles Langford. In Case 2 Gregoria Reyes de Bentley, in which the decedent's children contested the will, the husband waived his claim to his wife's estate after being charged with murder. Two contestants, both omitted sons, lost at trial (Case 229 Antonio Ginocchio and Case 410 Alexander Mecredy).

187. Case 95 Bridget Wilson, and Case 114 Emily Yoakam, both contests brought by the surviving husbands, and Case 216 Charles Langford, a contest brought by the decedents' seven children against their stepmother.

188. Case 2 Gregoria Reyes de Bentley.

*contested the will and codicil, claiming undue influence, lack of capacity and fraud. While a jury agreed with the husband on all grounds for both the will and the codicil, the verdict was reversed and the will and codicil were readmitted to probate in 1897. Further litigation followed when the special administrator was unable to account for over \$9000 in estate funds. The estate finally closed in 1898.*<sup>189</sup>

*Case 114 Emily Yoakam: Survived by her husband, six children and a sister. Her attested will executed eighteen days before her death named her son as executor, gave \$300 to her sister and the rest of her estate, appraised at \$2500, to her children. She gave nothing to her husband, stating "[m]y husband George P. Yoakam is able to provide for himself and no provision is therefore here made for him and for like reason I do not provide for my grandchild, the son of my deceased daughter Lucilla Libo." Her husband contested the will on grounds of undue influence, and the jury found for the husband. The court ordered a new trial and subsequently the will was admitted to probate. The husband then sued alleging the real property was community property. The court agreed, and her husband received the bulk of the real property after three suits to quiet title.*<sup>190</sup>

*Case 135 John Steinhauser: Survived by his wife and two minor children. Initially his 1889 holograph was admitted to probate, a will which left his wife \$1 and all the rest, appraised at \$1708, to his daughter. This will was successfully contested on the grounds that he had executed a later will. His 1891 attested will devised his real property and the fixtures of his drug store (appraised at \$920) to his wife, with the rest (appraised at \$788) to his two children. The executor named in the first will contested the second will and lost. The court probated the second will.*<sup>191</sup>

*Case 243 Charles Sarraute: Survived by his wife, and a nephew in France. His attested will executed six days before his death gave all his personal property (appraised at \$250) and a life estate in his real property (appraised at \$7000) to his wife. Upon his wife's death the real property was to go to his nephew. The testator signed by mark. His wife contested the will stating that the executors exerted fraud, duress, and undue influence. In a stipulated judgment the wife and nephew agreed that if the nephew gave up his interest in the estate the contest would be dismissed. The property was then distributed solely to his wife.*<sup>192</sup>

In four contested estates, the decedent left all or almost all to the spouse instead of to the children, who then sued.

*Case 2 Gregoria Reyes de Bentley: Survived by her husband and three adult children. Her attested will executed six months before her death gave*

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189. Case 95 Bridget Wilson.

190. Case 114 Emily Yoakam.

191. Case 135 John Steinhauser.

192. Case 243 Charles Sarraute.

*all her estate, appraised at \$883, to her husband. Her children contested the will and their stepfather's appointment as administrator, alleging fraud, undue influence, and other irregularities. The coroner ruled that Gregoria was poisoned and her husband was charged with murder. Her husband waived his right to inherit under the will, and the property was distributed to her three children.*<sup>193</sup>

*Case 216 Charles Langford: Survived by his wife (age forty-eight) and eight children (ages fourteen to fifty). Seven children were from a previous marriage that ended after his first wife filed for divorce claiming desertion. His 1887 attested will left \$20,000 and the homestead to his wife on the express condition that she relinquish all dower rights. His seven children by a former marriage were given \$1000 each. His eighth child Mabel (age fourteen) was left a father's blessing and in the care of her mother. An 1890 attested codicil provided that if his wife predeceased him, the entire estate would go to daughter Mabel. The seven children by his former wife contested the will. The jury agreed and found fraud and undue influence on the part of the second wife, but this verdict was overturned on appeal. The children dismissed their contest in 1895. His estate of \$34,727 included fifty parcels of real property worth \$31,350.*<sup>194</sup>

*Case 229 Antonio Ginocchio: Survived by his wife, son and daughter. His attested will executed twenty-three days before his death gave \$2000 in gold coin to his daughter; directed his wife to pay \$3 a month to his son for her life, and gave the rest of his \$16,163 estate to his wife. His wife was named executrix. The son contested the will alleging lack of capacity, and also that the property was separate and not community. The court admitted the will to probate.*<sup>195</sup>

*Case 410 Alexander Mecredy: Survived by his wife and eight children. His attested 1892 will gave all of his property to his son Alexander, subject to his paying the testator's wife \$50 a month for her life. "I further will and direct that no portion of my estate be given to either of my other children, or to any other person than as hereinbefore stated." Alexander was named executor in this will. Will number two (1893) gave real property in San Francisco to his wife Eliza and other real property to his daughter Mary Hughes. The 1893 will named all his children and stated, "I leave my said wife to make such provision for my said children other than the said Mary M. Hughes as she may deem best." His son Henry was nominated as executor. Alexander, the major beneficiary of the 1892 will, contested the probate of the 1893 will, claiming his father was not competent because he was "mortally sick." Son Henry claimed that the first will was invalid due to Alexander Junior's undue influence and failure*

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193. Case 2 Gregoria Reyes de Bentley.

194. Case 216 Charles Langford.

195. Case 229 Antonio Ginocchio.



to get proper medical care for the decedent. The court upheld the second will. His estate was appraised at \$3400.<sup>196</sup>

In one case, the testator left all of his considerable estate, appraised at over \$62,000, to his surviving wife; the will was contested by his two brothers, three sisters, and four nieces and nephews.

*Case 106/162*<sup>197</sup> *John Scheerer*: Survived by his wife, brothers, and sisters. His attested will executed two years before his death gave all his estate, appraised at \$62,750, to his wife and named her as executrix. His wife was one of two witnesses to the will. The testator's sister Mary Frey contested probate of the will on the grounds that it was not signed by two competent witnesses. Two brothers, three sisters, and four nieces and nephews filed a second contest of the will and also challenged whether six parcels of real property that decedent was alleged to have deeded to his wife in October 1888 had been properly transferred to her. The contestants alleged the deeds were not recorded until the day he died; his wife alleged they were recorded earlier. The parties settled in 1895, giving all the real property and half the personal property to his wife, and the other half of the personal property to the rival heirs.

One case pitted the decedent's minor children and two sisters against two business associates, with each group championing one will and contesting the other:

*Case 4 Patrick Conroy*: His 1888 attested will gave his property in Santa Ana, California to his two sisters, and all the rest of his property to his two minor children. His sisters and Michael O'Dea were named executors. His 1892 holograph executed less than a month before his death in New York named a Martin Currigan of Colorado and Michael O'Dea "to have full charge of my affairs without bonds," and one sister and a Mary Bulger of New York to be guardians of his children. The children contested the 1892 holograph and the court agreed, finding the testator was not of sound mind. Michael O'Dea contested the probate of the 1888 attested will, but that will was admitted to probate. The testator died a resident of Idaho but owned ninety-five lots in California valued at \$20,547.<sup>198</sup>

Finally, the eleventh contest involved an unmarried man with no children, whose parents in England ultimately inherited his property by intestacy:

*Case 206 George William Spawforth*: Survived by his parents and sisters in London. His first will executed at age twenty-one appointed J. S. Chapman as executor and left all his property in the United States to his

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196. Case 410 Alexander Mecredy.

197. Initially probate was opened for John Scheerer in Case 106. The testator's sister contested the will. The case was then re-opened as Case 162 for reasons that are not explained in the file. We have combined the two files.

198. Case 4 Patrick Conroy.

*father. Chapman presented the will and declined to be executor. The court appointed Frank Kelsey (Public Administrator) as administrator with the will annexed. A second will presented by J.B. Bainbridge was executed in 1892 when Spawforth was forty-one years old and gave all property to Bainbridge. Frank Kelsey contested the probate of the 1892 will on the grounds that it had been revoked; the court agreed, finding that the signature had been torn off by the testator with intent to revoke the will. Spawforth was declared to have died intestate and the court distributed his estate, appraised at \$5031, half to his father and half to his mother.*<sup>199</sup>

## 2. Other Litigation in Wills

Eleven testate estates, while not subject to a formal will contest, included other objections such as opposition to the appointment of the personal representative, challenges to accounts or claims presented, and objections to the characterization of property as separate or community.

Four of the eleven involved objections over the naming of the executor, including one case in which the person nominated in the will as attorney for the estate claimed he should be appointed co-executor and appealed the denial of his claim to the California Supreme Court. He lost.<sup>200</sup> In three

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199. Case 206 George William Spawforth.

200. Case 101 Anna Ogier. Survived by her brother, two nieces, four cousins, and her brother's grandchildren. Her attested will, executed less than three months before her death, gave her estate appraised at \$45,294 to relatives, friends, and three charities. She named one devisee, Mrs. Shorb, as executrix, and named the attorney who drafted the will, John Mitchell, as the attorney for the estate. John Mitchell petitioned to be named co-executor and attorney for the estate; both requests were denied by the trial court. Mitchell appealed to the California Supreme Court, where he again lost. Later his wife, Mrs. John Mitchell who had been bequeathed \$1000 and was also a residuary beneficiary of the will, sued Mrs. Shorb for a partial distribution of property to her, which the court granted in January 1894. Similarly, another devisee, Mary Billings, sued Mrs. Shorb in 1903 for an accounting, alleging that she had not received her bequest; the court granted her petition later that year. A final account was filed in 1904 to which Mary Billings filed objections. She finally received \$1977 in April 1904. Still problems persisted: In 1932 a niece requested that a public administrator be appointed to bring quiet title proceedings for one lot of real property valued at \$100. A public administrator was so appointed and discharged in 1936.

The other three cases in which an objection was made to the appointment of an administrator were: Case 215 Paul Kern. Survived by his wife and three nieces. His attested will executed three days before death gave \$1000 to each niece, and the rest of his \$39,796 estate to his wife. His wife served as executrix but died in early 1898 while the estate was still open. Frank Kelsey, the public administrator, petitioned to be appointed administrator. One niece opposed the appointment of Kelsey but later withdrew her objection. Case 92 Hiram Backus. Survived by his sister, a resident of Maine. The will gave all property to his sister and named her executor. The sister objected to the special administrator named. Case 374 Katie Sherman. Survived by her mother and 5-year-old daughter. In an attested will executed three months before her death she left the bulk of her \$44,000 estate in trust to her daughter. Her will named A.J. Bradish as executor and W.F. Bosbyshell as his alternate. Bradish declined to serve but later objected to the appointment of Bosbyshell; both men filed briefs arguing their cases and the court appointed Bosbyshell as executor, with Bradish named as guardian.

cases, beneficiaries objected to accounts and claims.<sup>201</sup> In another two cases, beneficiaries objected to the classification of property as community or separate.<sup>202</sup> In the last case, a daughter claimed she had been unintentionally omitted from the will and received her intestate share.<sup>203</sup>

### 3. Litigation in Intestacy

Similarly, the intestacy files show a fair degree of contentiousness. In 10 of the 138 intestate cases we found actions to quiet title, objections to accounts, and objections to the appointment of an administrator. In four cases, heirs contested the initial appointment of an administrator or asked that the administrator be replaced.<sup>204</sup> In two cases, heirs disputed the

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201. Case 72 George Lorenz. Survived by his wife (age forty-six), son George (thirty-eight), daughter Julia Jackson (forty) and son Howard (nine). His son George was named executor. The will divided all of his property equally among his wife and three children. His wife's request of support of \$150 a month was denied; instead the court granted her \$100 per month for six months. His wife objected to the final accounting claiming she had not received her allowance. Case 78 Jordan Neel. A resident of Pennsylvania, he was survived by six adult children. One son petitioned to be appointed administrator in Los Angeles. A daughter then petitioned that her brother be discharged as administrator because he had failed to take out the required bond. She later claimed that her brother had promised to pay her \$123 but did not, so she requested that the court re-open the estate and order the amount paid. Case 88 Mary Saunders. Survived by her husband, son, and four grandchildren. Her daughter-in-law was named executrix. The decedent's husband filed two petitions claiming the executrix had failed to file a full and true inventory. A citation was ordered.

202. Case 129 Christian Luckerman. Survived by his wife (age sixty-six), son Charles (forty-two) and three daughters (ages twenty-seven to thirty-nine). His attested will executed two days before his death and signed by mark left all of his estate, valued at \$8265, to his wife. The will was witnessed by his daughter Sophia and her husband. The testator's son Charles opposed his mother's request for a homestead on the grounds that it was decedent's separate property. The court found it was community property and ordered it set apart to the widow. The court found that the decedent unintentionally omitted his children and they were entitled to an intestate share and thus distributed the remaining property (all community property) one-half to the widow and one-half to the children. Case 391 Alfred Hanna. Survived by his wife and four children (ages twenty-four, twenty-one, nineteen, and three). His attested will executed thirty-four days before his death left all his estate, valued at \$7515, to his wife. The inventory included eight parcels of real property, but his wife successfully claimed that one parcel (worth \$150) was her separate property with title in her name alone and thus not subject to the decedent's creditors.

203. Case 24 James Marshall Duncan. Survived by two adult daughters. His will gave all property to his younger daughter and did not mention his older daughter. The older daughter successfully sued for her intestate share and one half of the estate was distributed to each.

204. Case 217 Mary Richardson. Survived by her husband and three minor children under fourteen. The decedent resided in Los Angeles with her children; her husband lived in Oregon. Both Frank Kelsey (Public Administrator) and the mother of deceased petitioned to be named administrator. The court appointed the mother. Case 222 John Eberle. Died in Silver City, New Mexico, survived by three adult children and one minor child (age sixteen). His son was appointed administrator. The guardian of the minor child filed a petition to revoke letters of administration on grounds that the administrator had failed to file an inventory or a security bond and had failed to find property belonging to the estate. Initially the court appointed a new administrator but ultimately found the petition's allegations to be untrue and reinstated the son as administrator. Case 330 C.E. Green. No

characterization of property belonging to the estate.<sup>205</sup> Two cases involved actions to quiet title to real property of intestate estates.<sup>206</sup> In the final two cases heirs objected to accounts.<sup>207</sup>

#### 4. Private Agreements Altering the Terms of the Will or Intestate Shares

Overall, in both testate and intestate estates, we found seventeen instances where family members agreed to vary the terms of distribution for the property. Seven involved varying the terms of a will, often with one sibling assigning an interest to another sibling.<sup>208</sup> In the ten intestacy cases,

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known heirs. Edgar Moore applied to be administrator, but was contested by the Public Administrator, Frank Kelsey. Moore offered no reason why he should be administrator. No order was in the file appointing an administrator or an appraiser — the estate may have had no assets. Case 349 Jennie Simons. Survived by her husband, no issue, and her parents. Her estate included four parcels of real property, which her husband, as her administrator, sold. The court found that he committed waste with the funds, and her parents successfully sued to remove him in 1896. The replacement administrator had to sue the sureties of the husband's bond in 1898. The replacement administrator died in 1898. In November 1899 a third administrator collected the funds and closed the estate.

205. Case 149 Eugene Sanford. Survived by his wife and brothers. His wife died in 1894, and her executrix successfully claimed that Eugene held eighty acres in trust for his wife. Case 166 B.V. Romick. Survived by her husband and twelve family members. Her husband successfully claimed the property in her estate was his separate property.

206. Case 35 Lizetta Townsend. Survived by her husband (a resident of Portland, Oregon) and her son from a former marriage, E.L. Webb (age twenty-four) of Los Angeles. The estate lost its action to quiet title so no property remained to be administered. Case 133 Maria Polonia Day. Died in August 1867 survived by a son (age forty-four) who was named her administrator. Her son alleged that the decedent had inherited certain real property when her husband died in January 1858. Her son, as administrator, sued the executor of Bridget Wilson (Case 95) to quiet title, alleging his mother's real property was worth \$10,000; the son settled for \$750.

207. Case 36 Gus Kurz. No known heirs. A resident of Missouri when he died, he had a bank account in Los Angeles with \$227. His Missouri administrator successfully challenged a creditor's claim for \$99. Case 205 Emma Eggert. Survived by her husband and minor children. Her husband was named administrator. Her estate included real property appraised at \$2900 and personal property worth \$30. The minor children (through a guardian) contested the final account, claiming the land was sold through collusion to the husband's sister and that the mortgage on the real property was the husband's separate debt. The contest by the children was deemed without merit.

208. Case 5 John W. Polley. Survived by three adult children. The testator left real property in California half to his daughter Alice and one-fourth each to his two sons Frank and Harry. Alice and Frank conveyed their interests in four lots in Pasadena worth \$10,000 to brother Harry. Case 10 Charlotte Maxwell. Survived by three children and two grandchildren. The will gave \$1000 to each grandchild, and all the rest to her children. Two of the children conveyed their interests in the California real property to the third child, a California resident who was named executor of the estate. Case 58 Lucia Pierce. Survived by her husband and three daughters. In a will executed in Illinois, she gave a life estate to her husband, and then to such children as then living. In 1908, the property was distributed half to her husband and one-sixth to each daughter. Case 110 Alexander McCoy. His will gave \$200 per year to his sister Mattie McCoy for life, and the rest of his property to his wife. Mattie (age fifty-six) assigned her interest to his wife for \$1500 cash. Case 230 Mary Perham. Her codicil allowed her son-in-law to live rent-free on their joint property. He declined all interest in the will. Case 326 Richard Chippendale. Survived by

the usual variance involved children assigning their interests to their mother,<sup>209</sup> or a parent assigning her interest to a child,<sup>210</sup> or to the decedent's husband.<sup>211</sup>

## V. CONCLUSION

The probate files are a rich source of information about the lives of women and men in Los Angeles as it transitioned and grew into a major city. The availability of land and the use of promissory notes allowed the industrious the opportunity to save money and leave an estate to their families and friends. Ten women left estates over \$10,000 in 1893 dollars, compared with twenty-two men. Of these, one woman began as a maid

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four children and three minor grandchildren (children of a deceased daughter). His will left everything to his daughter Maria and named her executrix. Maria declined and her brother William acted as administrator. The other children and the grandchildren were not mentioned in the will. The heirs agreed that Maria should receive four-fifths and the three grandchildren the other one-fifth. The total value of the estate after debts was \$590. Case 350 Aaron Frew. The testator devised his house to his wife for her life, then to his daughter. His son was devised his guns and the right to collect on various notes which were worth more than the real property. To pay off the mortgage on the house and other debts, the son agreed to seek an order to sell the notes which was approved.

209. Case 42 Clinton Fisher. Survived by his wife and two sons. In an estate appraised at \$1,065, the sons transferred their interests to their mother. Case 112 Daniel Chandler. Survived by his wife Elizabeth (who died Feb. 24, 1893, before the petition to probate his estate was filed), and three adult children. His daughter was appointed administratrix. Two of the three children deeded most of their interest to their mother (Case 113). Case 384 Robert Sloan. Survived by his wife Alice (age fifty) and three adult children. His widow was appointed administratrix. Two children assigned their interest to his widow but the son did not. His estate was initially appraised at \$6400. In December 1902, by then valued at \$14,000, the estate was distributed five-sixths to the widow and one-sixth to the son. Case 390 H.K.S. O'Melveny. Survived by his wife Annie, who declined appointment as administratrix, and four adult children. His son H.W. O'Melveny was appointed administrator with \$10,000 bond. The four children conveyed all to their mother, who died testate the following year. Case 429 Joshua Goodlin. Survived by his wife (who died seven months later) and three children. The children assigned their interests to their mother. After she died, the children divided the property consisting of real property worth \$850. The estate was closed in 1900.

210. Case 7 Wilkerson Higgons. A resident of Ohio, he owned one parcel of real property in California, appraised at \$2000. He was survived by his wife, son and daughter. His wife and son transferred their rights to his daughter. Case 33 Michael Hungerford. Survived by his wife and two sons. His wife transferred her interest in the estate, appraised at \$2763, to her two sons. Case 333 William Penfield. Survived by his wife (appointed administratrix) and three adult children. His wife died in January 1894 and his daughter Carrie Thompson acted as administratrix. His sole asset was one improved lot, appraised at \$2500. The siblings conveyed their interests in the real property to their sister Carrie.

211. Case 324 Lora Street. Survived by her husband, no issue, and six siblings (one in California). Decedent was the daughter-in-law of Case 323 Charles Street. Her siblings agreed to give their interests to her husband, subject to one minor attaining the age of twenty-one and relinquishing her interest. Her sole asset was one lot in Pomona, a gift from her husband. Case 385 Susan Marcy. A resident of Connecticut, she was survived by her husband Samuel and her mother. Her property consisted of one parcel of real property in Los Angeles, appraised at \$875. Her mother transferred her interest in the estate to the decedent's husband.

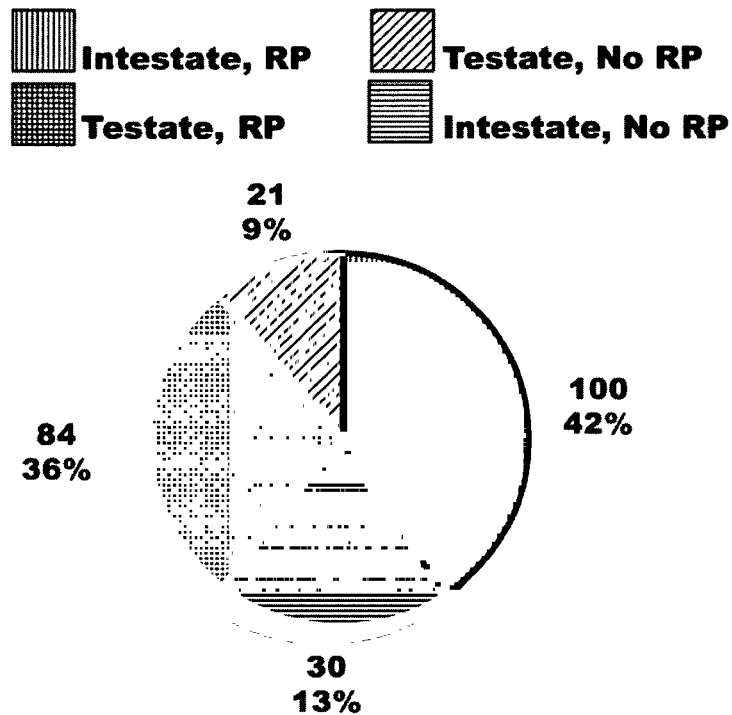
from Ireland who ended up being the richest woman dying in Los Angeles in 1893, with an estate of over \$285,000. Women were more likely to include children and other family members in their wills, while men were more likely to leave most or all of their property to their wives. Men showed a tendency to favor one child or grandchild over another; women who left property to their issue tended to leave it in equal shares. While few testators omitted family entirely from their wills, the four who did so were men.

The most surprising finding was the amount of litigation in a sample so small. Ten percent of the wills were formally contested. Another 10 percent, while not formally contested, were litigated for other reasons; in an additional seventeen cases, the heirs and devisees altered the distribution plan adopted by the decedent or the intestacy statutes.

These files demonstrate that, in some ways, Los Angeles in the 1890s was ahead of other parts of the country in women's rights. For example, men in Los Angeles routinely named their wives as executrix of the estate, unlike those in Pennsylvania. Relatively few men tied up legacies to a wife or daughter in a trust or a life estate, choosing instead to give the beneficiary fee simple rights to the property. On the other hand, perhaps because California law at the time gave women no right to devise their share of the community property, women constitute a smaller percentage of both the testate and the intestate than in studies from the same time period on the East Coast. The amount of litigation, while apparently unrelated to gender, may reflect the entrepreneurial spirit of Angelenos at that time, and the willingness of the inhabitants to take a chance and buy real property in the city. This study shows the emergence of women as an economic force in California.

## APPENDIX A

**Figure 1**  
**Real Property Percentages**



**For all estates: 235 total (105 testate, 130 intestate)**

**Testate with real property = 84 decedents**

**No real property = 21**

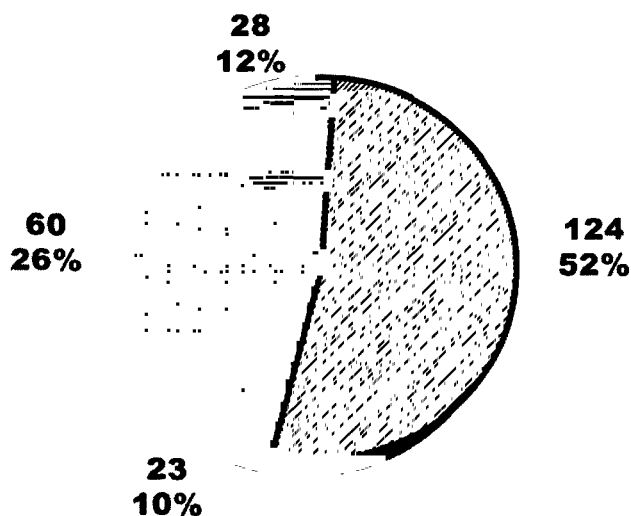
**84/105 = 80% of testate decedents had real property.**

**Intestate with real property = 100 decedents**

**No real property = 30**

**100/130 = 77% of intestate decedents had real property.**

**Figure 2**  
**Married v. Single — Total**



**For all estates: 235 total (88 single, 147 married)**  
**(147/235 = 63% married)**

**Single with real property = 60 decedents**

**No real property = 28**

**60/88 = 68% of single decedents had real property.**

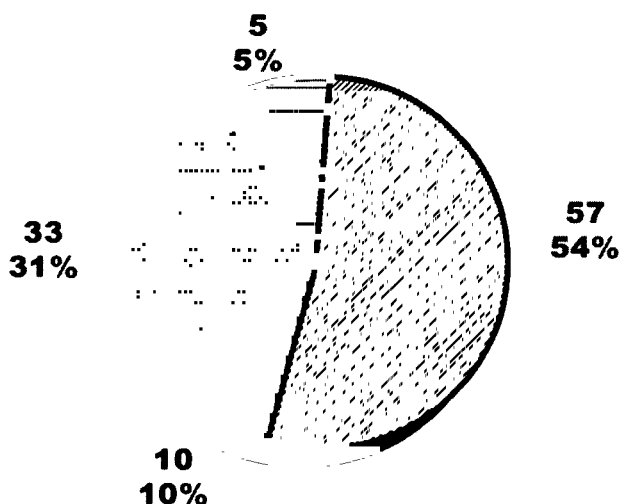
**Married with real property = 124 decedents**

**No real property = 23**

**124/147 = 84% of married decedents had real property.**



**Figure 3**  
**Married v. Single — Testate**



**For decedents who died testate: 105 total (38 single, 67 married)(67/105 = 64% married)**

**Single with real property = 33 decedents**

**No real property = 5**

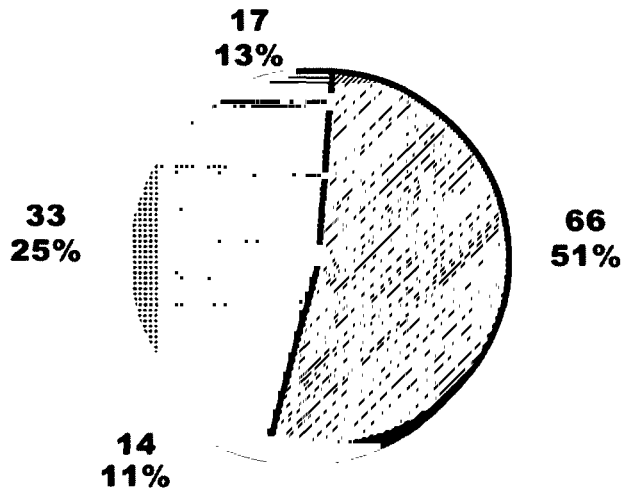
**33/38 = 87% of single testators had real property.**

**Married with real property = 57 decedents**

**No real property = 10**

**57/67 = 85% of married testators had real property.**

**Figure 4**  
**Married v. Single — Intestate**



**For decedents who died intestate: 130 total (50 single, 80 married)(80/130 = 62% married)**

**Single with real property = 33 decedents**

**No real property = 17**

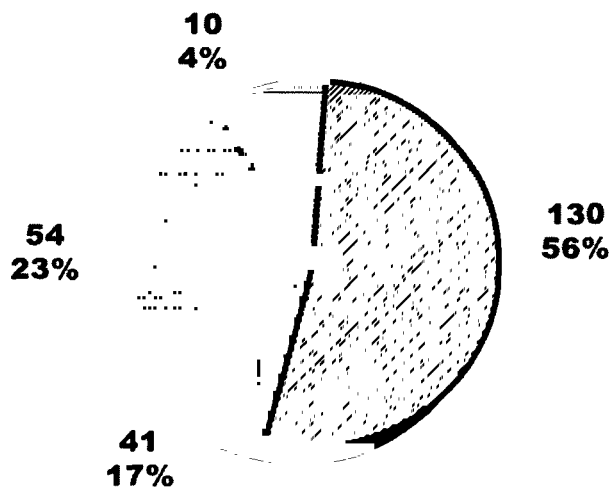
**33/50 = 66% of single intestates had real property.**

**Married with real property = 66 decedents**

**No real property = 14**

**66/80 = 82% of married intestates had real property.**

**Figure 5**  
**Male v. Female — Total**



**For all estates: 235 total (171 men, 64 women)(64/235 = 27% women)**

**Women with real property = 54 decedents**

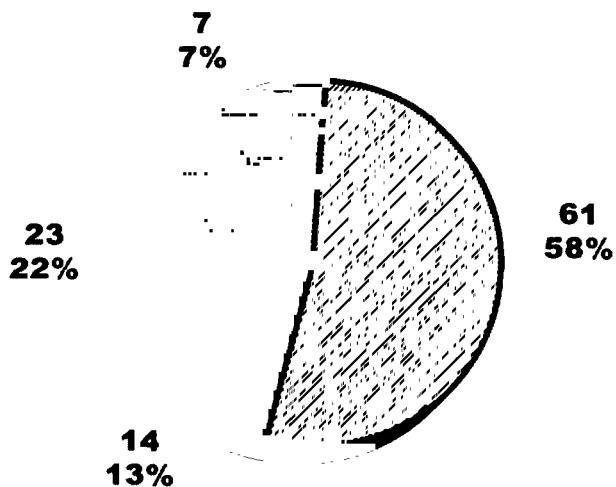
**No real property = 10**

**54/64 = 84% of female decedents had real property.**

**Men with real property = 130 decedents**

**No real property = 41**

**130/171 = 76% of male decedents had real property.**

**Figure 6****Male v. Female — Testate**

**For all decedents who died testate: 105 total (75 men, 30 women)(30/105 = 29% women)**

**Women with real property = 23 decedents**

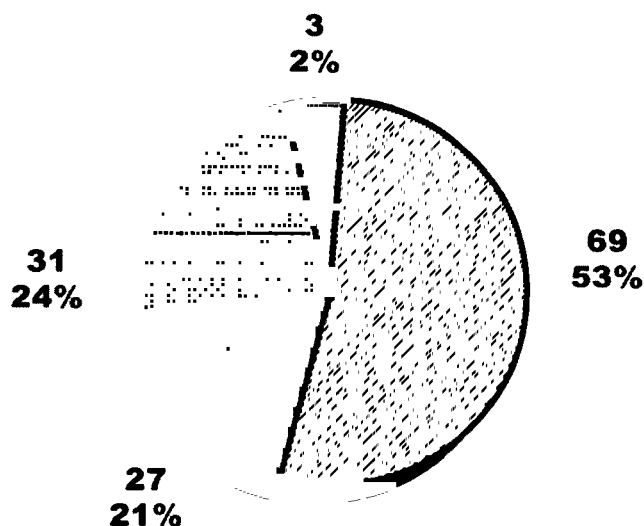
**No real property = 7**

**23/30 = 77% of female testators had real property.**

**Men with real property = 61 decedents**

**No real property = 14**

**61/75 = 81% of male testators had real property.**

**Figure 7****Male v. Female — Intestate**

**For all decedents who died intestate: 130 total (96 men, 34 women)(34/130 = 26% women)**

**Women with real property = 31 decedents**

**No real property = 3**

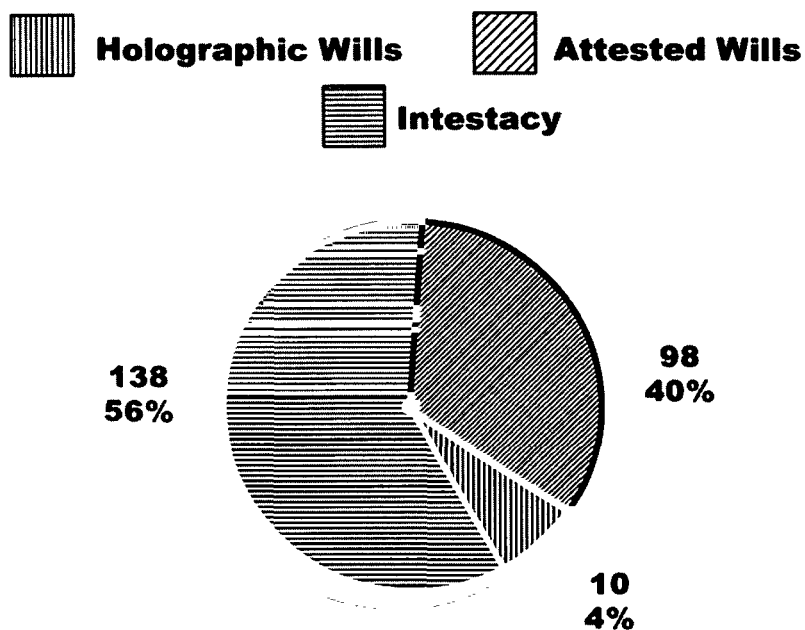
**31/34 = 91% of female intestates had real property.**

**Men with real property = 69 decedents**

**No real property = 27**

**69/96 = 72% of male intestates had real property.**

**Figure 8**  
**Intestacy v. Wills**

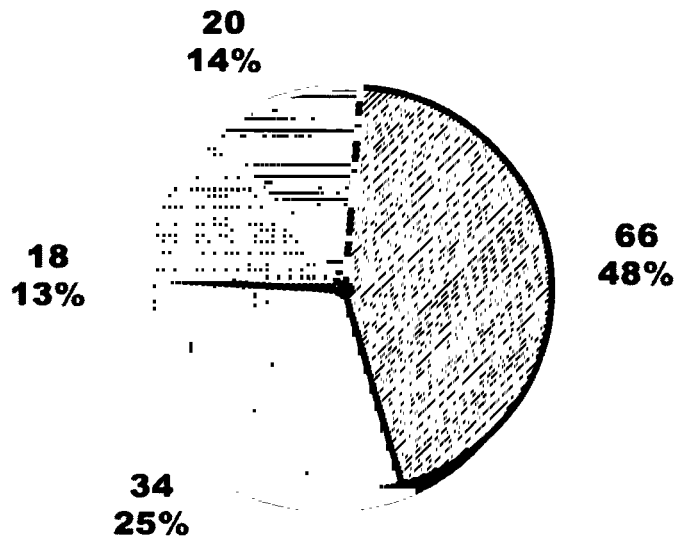
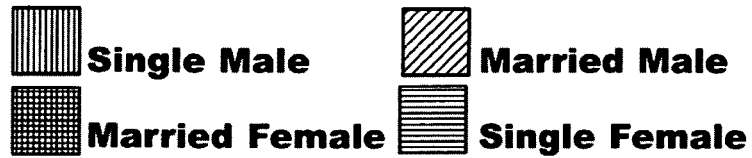


**For all estates: 246 total (138 intestate, 108 testate)**

**Holographic Wills = 10 decedents (10/108 = 9%)**

**Attested Wills = 98 decedents (98/108 = 91%)**

**Figure 9**  
**Intestacy**

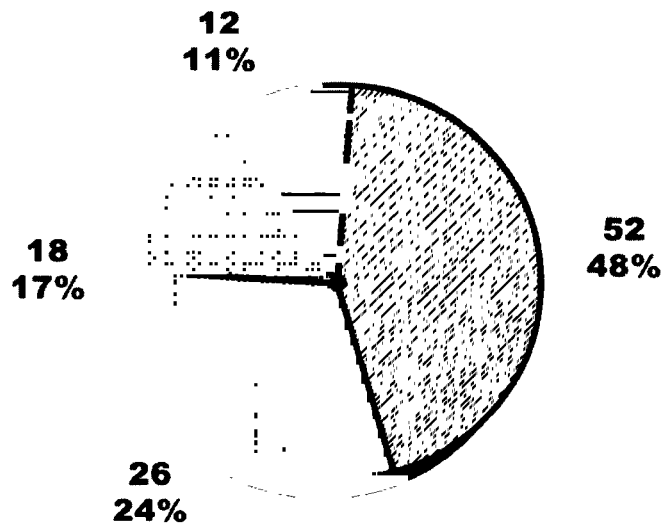


**For decedents who died intestate: 138 total (100 male, 38 female)(100/138 = 72% male)**

**Married men dying intestate = 66 decedents**  
**Single men dying intestate = 34 decedents**

**Married women dying intestate = 18 decedents**  
**Single women dying intestate = 20 decedents**

**Figure 10**  
**Wills**



**For decedents who died testate: 108 total (78 male, 30 female)(78/108 = 72% male)**

**Married men dying with wills = 52 decedents**  
**Single men dying with wills = 26 decedents**

**Married women dying with wills = 18 decedents**  
**Single women dying with wills = 12 decedents**



## APPENDIX B

Table 1.

The 20 smallest intestate estates, in order of size based on total property reported in the inventory, were:

Loc	Case	Name	M/ F	M/S	RP	PP	Total
102130	421	Munro	Male	Single		\$25	\$25
102125	240	Tellier	Male	Married		\$25	\$25
102121	91	Montagono	Male	Single		\$26	\$26
102138	337	Price	Female	Single	\$48	\$33	\$81
102125	235	McMahon	Male	Single	\$82		\$82
102128	328	Rosenburg	Male	Single		\$85	\$85
102128	324	Street	Female	Married	\$100		\$100
102123	138	Larivee	Female	Married	\$100		\$100
102122	102	Hawker	Male	Married	\$100		\$100
102119	19	Shaw	Male	Single	\$100		\$100
102123	160	Sheehan	Male	Single		\$108	\$108
102121	90	Dow	Male	Married	\$110		\$110
102128	354	Minnick	Male	Single	\$200		\$200
102127	311	Minick	Male	Married	\$200		\$200
102122	107	Agnew	Male	Single	\$200		\$200
102119	36	Kurz	Male	Single	\$227		\$227
102121	75	Skillen	Male	Single	\$235		\$235
102128	330	Green	Female	Single	\$250		\$250
102119	35	Townsend	Female	Married	\$250		\$250
102127	318	Bryant	Male	Married		\$255	\$255

RP = Real property

PP = Personal property

Table 2.

The 20 smallest testate estates, in order of size based on total property reported in the inventory, were:

Loc	Case	Name	M/F	M/S	RP	PP	Total
102127	293A	Flanagan	Female	Single	\$50		\$50
102120	68A	Whittier	Male	Single	\$75		\$75
102129	389A	Wishard	Female	Widow	\$320		\$320
102119	15A	Herera	Female	Widow		\$320	\$320
102130	419A	Herminghaus	Female	Married		\$325	\$325
102128	321A	Kenney	Male	Single	\$350		\$350
102125	228H	Burks	Male	Married	\$390		\$390
102128	345A	Mell	Male	Married	\$250	\$168	\$418
102125	223A	Gerry	Male	Single		\$451	\$451
102123	143A	Naud	Male	Single	\$500		\$500
102128	342A	Charvoz	Male	Single		\$545	\$545
102123	155A	Thompson	Male	Widower	\$550		\$550
102128	361A	Wagner	Male	Single	\$500	\$66	\$566
102127	302A	Miller	Female	Married	\$600		\$600
102119	24A	Duncan	Male	Widower	\$650	\$70	\$720
102129	366H	Mueller	Male	Single		\$800	\$800
102122	109A	Meisgeier	Male	Single		\$829	\$829
102119	2A	De Bentley	Female	Married		\$883	\$883
102128	326A	Chippendale	Male	Widower		\$916	\$916
102120	41A	Tolles	Male	Married	\$1000		\$1000

RP = Real property

PP = Personal property

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